

**LAW OFFICE OF
DEXTER K. KAIAMA**

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August 28, 2013

FedEx-Delivered

The Attorney General at the Federal Court
Brauerstraße 30
76135 Karlsruhe
Germany

***Re: Complaint for War Crimes Committed Under the German Code of Crimes against
International Law***

Dear Attorney General Harald Range,

In accordance with Section 6 (9) of the German Criminal Code, which provides “German criminal law shall further apply, regardless of the law of the locality where they are committed, to the following offences committed abroad...offenses which on the basis of an international agreement binding on the Federal Republic of Germany must be prosecuted even though committed abroad,” the German Code of Crimes against International Law (CCAIL), and the 1879 Hawaiian-German Treaty of Friendship, Commerce and Navigation and Consular Convention ([Attachment “A”](#)), I am filing this complaint, on behalf of my clients, Mr. KALE KEPEKAIO GUMAPAC and Mr. HARRIS BRIGHT, both being Hawaiian subjects and protected persons, for war crimes committed against their persons on the Island of Hawai'i by DEUTSCHE BANK, a German company headed by a Management Board, namely, JÜRGEN FITSCHEN, Co-Chief Executive Officer, ANSHU JAIN, Co-Chief Executive Officer, STEFAN KRAUSE, Chief Financial Officer, STEPHAN LEITHNER, Chief Executive Officer Europe (except Germany and UK), Human Resources, Legal & Compliance, Government & Regulatory Affairs, STUART LEWIS, Chief Risk Officer, RAINER NESKE, Head of Private and Business Clients, and HENRY RITCHOTTE, Chief Operating Officer; DEUTSCHE BANK NATIONAL TRUST COMPANY, a United States of America company; DEUTSCHE BANK TRUST COMPANY AMERICAS, also a United States of America company; Judge GREG K. NAKAMURA, ESQ.; and Deutsche Bank National Trust Company's attorneys CHARLES R. PRATHER, ESQ., SOFIA M. HIROSONE, ESQ., and MICHAEL G.K. WONG, ESQ. DEUTSCHE BANK is the parent company of both DEUTSCHE BANK TRUST COMPANY AMERICAS and DEUTSCHE BANK NATIONAL TRUST COMPANY and collectively known herein, together with the officers of the aforementioned Management Board, as “DEUTSCHE BANK.”

- DEUTSCHE BANK'S address is Taunusanlage 12, 60325 Frankfurt, Germany.
- DEUTSCHE BANK TRUST COMPANY AMERICAS and DEUTSCHE BANK NATIONAL TRUST COMPANY'S address is 1761 East Street Andrew Place, Santa Ana, California, 92705-4934, United States of America.
- Judge GREG K. NAKAMURA, ESQ., is a Circuit Court Judge for the Third Circuit whose address is Hale Kaulike, 777 Kilauea Avenue, Hilo, HI 96720-4212.
- CHARLES R. PRATHER, ESQ., SOFIA A. HIROSONE, ESQ., and MICHAEL G.K. WONG, ESQ., belong to the law firm RCO Hawaii, LLLC, whose address is 900 Fort Street Mall, Suite 800, Honolulu, HI 96813.

VIOLATIONS ALLEGED:

On March 9, 1954, the Federal Republic of Germany acceded to the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, and on June 26, 2002, enacted the CCAIL in order to “undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the...Convention” pursuant to Article 146 of the same. On January 14, 2013, the Hawaiian Kingdom acceded to the Fourth Geneva Convention ([Attachment “B”](#)), thereby becoming a High Contracting Party, which now affords protection to both my clients, as a Hawaiian subjects, protected persons status under the Convention. Relevant portions of the CCAIL provides:

PART 1. General Provisions

Section 1. *Scope of application.* This Act shall apply to all criminal offences against international law designated under this Act, to serious criminal offenses designated therein even when the offences was committed abroad and bears no relation to Germany.

Section 4. *Responsibility of military commanders and other superiors.* (2) Any person effectively giving orders or exercising command and control in a unit shall be deemed equivalent to a military commander. Any person effectively exercising command and control in a civil organization or in an enterprise shall be deemed equivalent to a civilian superior.

PART 2. Crimes against International Law

CHAPTER 2. War Crimes.

Section 8. War Crimes against persons. (1). Whoever in connection with an international [occupation]¹...7. imposes on, or executes a substantial sentence in respect of a person who is to be protected under international humanitarian law...without that person having been sentenced in a fair and regular trial affording the legal guarantees required by international law...shall be punished, ...in the cases referred to under numbers 6 to 8, with imprisonment for not less than two years.

Section 9. War crimes against property and other rights. (1) Whoever in connection with an international [occupation] ...pillages...shall be punished with imprisonment from one to ten years.

CHAPTER 2. Other Crimes.

Section 13. Violation of the duty of supervision. (2) A civilian superior who intentionally or negligently omits properly to supervise a subordinate under his or her authority or under his or her effective control shall be punished for violation of the duty of supervision if the subordinate commits an offense pursuant to this Act, where the imminent commission of such an offense was discernible to the superior without more and he or she could have prevented it

Both my clients, herein, allege that DEUTSCHE BANK has knowingly and intentionally utilized an unlawfully constituted court, thereby denying my clients a fair and regular trial (Chapter 2, section 8, CCAIL), in order to deliberately seek an court order to pillage (Chapter 2, section 9, CCAIL) my client Mr. KALE KEPEKAIO GUMAPAC'S property at 15-1716 Second Ave., Keaau, Hawaiian Islands 96749, and my client Mr. HARRIS BRIGHT'S property at 15-1467 Eleventh Ave., Keaau, Hawaiian Islands 96749. Accessories to the war crime include, but are not limited, to Judge GREG K. NAKAMURA, ESQ., and DEUTSCHE BANK'S attorneys CHARLES R. PRATHER, ESQ., SOFIA M. HIROSONE, ESQ., and MICHAEL G.K. WONG, ESQ.

¹ The Fourth Geneva Convention, 1949, also applies to occupations of State territory. Article 2 provides "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."

Presently, Lieutenant PATRICK KAWAI,² State of Hawai‘i Department of Public Safety Sheriff’s Department, to include his superiors and his deputies, have threatened to remove both my clients from their property by unlawful orders of DEUTSCHE BANK by virtue of a court that is self-declared. DEUTSCHE BANK has no legal interest in any of my clients’ property because their mortgage agreements with DEUTSCHE BANK are “void” as a result of a defect in both my clients’ title to their real properties.

Accordingly, and as more fully set forth herein below, DEUTSCHE BANK, despite having no valid and legal interest in both of my clients’ property, has deliberately ignored pursuing its proper remedy for financial recovery, and instead, intentionally violated CCAIL (and international law) by initiating a fraudulent and unlawful court process to obtain unlawful orders to evict my clients from their property, thereby committing violations of the CCAIL as stated above.

DEUTSCHE BANK is a German financial institution headquartered in the city of Frankfurt that has and continues to commit violations of the CCAIL abroad in the Hawaiian Islands and its crimes of “deprivation of a fair and regular trial” and “pillaging” have affects both abroad and in Germany—utilizing fraud and violations of the CCAIL for the financial benefits of the perpetrator at home and to the extreme prejudice of my clients abroad here in the Hawaiian Islands. Evidence of the war crimes alleged herein is provided by the attachments hereto and the principal suspects are currently present or can reasonably be expected to be present in Germany and accessible to your office for questioning.

FACTS OF THE CASE:

Mr. KALE KEPEKAIO GUMAPAC (Victim):

In 2011, after a non-judicial foreclosure, ejectment proceedings were instituted against my client, Mr. GUMAPAC, by DEUTSCHE BANK in the Circuit Court of the Third Circuit, Hilo, on the Island of Hawai‘i. Unbeknownst to my client was that his fee-simple title was defective for want of a competent notary public, which would consequently render the mortgage agreement, the non-judicial foreclosure, and the ejectment proceedings void. DEUTSCHE BANK is the assignee of the mortgage and note Mr. GUMAPAC entered into with Argent Mortgage Company, LLC.

² Lieutenant Kawai, to include his superiors and deputies, have already committed the war crime of pillaging against another client who is a Filipino citizen, whereby a *Complaint for the Commission of War Crimes Under [Philippines] Republic Act No. 9851, An Act defining and penalizing crimes against international humanitarian law, genocide and other crimes against humanity, organizing jurisdiction, designating special courts, and for related purposes (2009)*, by MARIA ALMA BARBASO PILAPIL, also known as Maria Alma Barbaso Schwartz, wife of Stephen Michael Schwartz, was filed with the Republic of the Philippines Consulate General on August 15, 2013.

When Mr. GUMAPAC, together with his former wife, Dianne Dee Gumpac, mortgaged their property at 15-1716 Second Ave., Keaau, Hawaiian Islands 96749, they were required by Argent Mortgage Company, LLC, as a condition of the loan, to go to escrow, being Title Guaranty of Hawai'i, Inc., to purchase a loan policy in the amount of \$290,000.00 for the benefit of Argent Mortgage Company, LLC, should there be defect in title. According to the loan policy they purchased, they paid a premium of \$1,050.00 for a loan policy dated December 19, 2005 with Argent Mortgage Company, LLC, as the named insured ([Exhibit #2 of Attachment "C"](#)). Mr. GUMAPAC has since divorced his wife, Dianne Dee Gumapac, and he is the owner of the property as a tenant in severalty.

On January 21, 2011, Mr. GUMAPAC'S company Laulima Title Search and Claims, LLC, formerly Hawaiian Alliance, LLC, investigated the status of his fee-simple title that was acquired from Linda Vivian Little and Alice Evelyn Little, on April 17, 2002, under document no. 2895104, on certificate no. 505,052, issuance of certificate no. 637,651 in the Hawai'i Bureau of Conveyances ([Exhibit #3 of Attachment "C"](#)). Laulima Title Search and Claims, LLC, provides claims packages to be filed with title insurance companies under a lender's and owner's policy.

Laulima's investigation identified defects in Mr. GUMAPAC'S fee-simple title that should have been disclosed in the title report done by the title company at escrow, which he paid for and which also formed the basis of the lender's title insurance policy purchased by him. The report summarized the defect by stating:

"This claim involves a defect of title by virtue of an executive agreement entered into between President Grover Cleveland of the United States and Queen Lili'uokalani of the Hawaiian Kingdom, whereby the President and his successors in office were and continue to be bound to faithfully execute Hawaiian Kingdom law by assignment of the Queen under threat of war on January 17th 1893. The notaries public in the Hawaiian Islands and the registrar of the Bureau of Conveyances were not lawful since January 17th 1893, and therefore title to the estate in fee-simple described as Lot 2787, area 1.00 acre, more or less, Block 7, as shown on Map 58 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i with Land Court Application no. 1053 (amended) of W.H. Shipman, Limited, under document no. 2895104 & certificate no. 505052, filed with the Registrar of the Bureau of Conveyances on February 24th 2003, is vested other than Kale Kepekaio Gumapac and Dianne Dee Gumapac, now divorced, because the aforementioned deed of conveyance

was not lawfully executed in compliance with Hawaiian Kingdom law.”

The defective notary and registrar of the Hawai‘i Bureau of Conveyances are covered risks under the lender’s title insurance policy Mr. GUMAPAC purchased for the protection of DEUTSCHE BANK. Having been apprised of the defect and evidence of the same, which rendered the mortgage agreement void, Mr. GUMAPAC sent a notice by letter to DEUTSCHE BANK on November 22, 2011 ([Attachment “C”](#)), giving notice of the defect in title with evidence, and for DEUTSCHE BANK to file an insurance claim under the lender’s title insurance policy my client purchased.

Mr. HARRIS BRIGHT (Victim):

In 2011, after a non-judicial foreclosure, ejectment proceedings were instituted against my client, Mr. BRIGHT, by DEUTSCHE BANK in the Circuit Court of the Third Circuit, Hilo, on the Island of Hawai‘i. Unbeknownst as well to Mr. BRIGHT was that his fee-simple title was also defective for want of a competent notary public, which would consequently render the mortgage agreement, the non-judicial foreclosure, and the ejectment proceedings void. DEUTSCHE BANK is the assignee of the mortgage and note my client entered into with Homecomings Financial Network, LLC.

When Mr. BRIGHT mortgaged his property at 15-1467 Eleventh Ave., Keaau, Hawaiian Islands 96749, he was required by Homecomings Financial Network, LLC, as a condition of the loan, to go to escrow to purchase a loan policy in the amount of \$220,000.00 for the benefit of Homecomings Financial Network, LLC, should there be defect in title. According to Mr. BRIGHT’S HUD-1 statement, he paid a premium of \$250.00 for a loan policy with Homecomings Financial, LLC, as the named insured ([Exhibit #1 of Attachment “D”](#)).

In March of 2011, Mr. BRIGHT retained Laulima Title Search and Claims, LLC, formerly Hawaiian Alliance, LLC, to investigate the status of his fee-simple title that was acquired from Shuichi Taki and Takako Taki, husband and wife, under document no. 3273864, on certificate no. 278,340, issuance of certificate no. 750,398 in the Hawai‘i Bureau of Conveyances ([Attachment “E”](#)).

Laulima’s investigation identified defects in his fee-simple title that should have been disclosed in the title report done by the title company at escrow, which he paid for and which also formed the basis of the lender’s title insurance policy he purchased. The report summarized the defect by stating:

“This claim involves a defect of title by virtue of an executive agreement entered into between President Grover Cleveland of the United States and Queen Lili`uokalani of the Hawaiian Kingdom, whereby the President and his

successors in office were and continue to be bound to faithfully execute Hawaiian Kingdom law by assignment of the Queen under threat of war on January 17th 1893. The notaries public in the Hawaiian Islands and the registrar of the Bureau of Conveyances were not lawful since January 17th 1893, and therefore title to the estate in fee-simple described as all those certain parcels of land situate at Keaau, District of Puna, Island of Hawai'i, described as PARCEL FIRST: Lot 1549, area 1.000 acre, more or less, Block 7, as shown on Map 58, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i with Land Court Application no. 1053 (amended) of W.H. Shipman, Limited; PARCEL SECOND: an undivided 1/5750 interest in Lots 60, 62, 8297, 8363, 8385, 8387 and 3115 in Block 7, Lot 1 in Block 10; as shown on Maps 10, 10, 55, 56, 56, 57, 58 and 65, respectively, of said Land Court Application no. 1053 (amended); and Lot 4-B, as shown on Map 2 of Land Court Application no. 1689 of W.H. Shipman, Limited, to be used in common with other entitled thereto, for roadway and utility purposes only, is vested other than Harris Bright.”

The defective notary and registrar of the Hawai'i Bureau of Conveyances are covered risks under the lender's title insurance policy Mr. BRIGHT purchased for the protection of DEUTSCHE BANK. Having been apprised of the defect and evidence of the same, which rendered the mortgage agreement void, Mr. BRIGHT sent a notice by letter to DEUTSCHE BANK on May 24, 2011 ([Exhibit #3 of Attachment "D"](#)), giving notice of the defect in title with evidence, and for DEUTSCHE BANK to cease the ejectment proceedings and to file an insurance claim under the lender's title insurance policy he purchased.

Although both my clients have defects in their fee-simple title, which has affected their claim to “legal” title, they do however maintain an “equitable” interest to the property because they did pay valuable consideration for the property, as aforementioned, and will acquire “legal” title once the defect has been remedied under Hawaiian law.

According to Black's Law Dictionary, 6th ed., title insurance is a “policy issued by a title company after searching the title, representing the state of that title and insuring the accuracy of its search against claims of title defects.” It is an indemnity contract that does not guarantee the state of the title but covers loss incurred from a defect in land titles that would arise from an inaccurate title report.

In *Foehrenbach v. German-American Title & Trust Company*, 217 Pa. 331, 337 (1907), the Court stated title insurance insures “against defects...as of that date. [The insurance

company says], you are in our judgment the owner in fee of the entire interest in this property, and we will back our opinion by agreeing to hold you harmless, up to the amount of the policy, in case for any reason our judgment in this respect should prove to be mistaken.” And in *Falmouth National Bank v. Ticor Title Insurance Company*, 920 F.2d 1058, 1064 (1990), the Court stated:

“The title insurance policy...provided that when presented with a claim of an adverse interest to the insured property, the insurer had the option of pursuing a quiet title action without unreasonable delay, or of paying any loss resulting from the defect. Regarding the timing of payment of the loss, the policy contained precisely the same language as Ticor's policy, namely, that ‘when liability has been definitely fixed . . . the loss or damage shall be payable within 30 days thereafter.’ In a lengthy opinion, the court held that the liability of the insurer was definitely fixed when it refused to take any action to quiet title. Thus, the court held that an offer of payment of the loss was due thirty days thereafter.”

DEUTSCHE BANK deliberately chose not to file the insurance claims and maintained the ejectment proceedings against my clients through fraud, which would ultimately lead to the commission of the aforementioned war crime of “unfair trial” and presently the possible war crime of “pillaging.” The sheer number of cases of pillaging through foreclosures by DEUTSCHE BANK here in the Hawaiian Islands since the enactment of the CCAIL in 2002 is staggering, and DEUTSCHE BANK cannot rely on ignorance as a defense to these crimes and additional war crime complaints will be forthcoming.

In the *Trial of Friedrich Flick and Five Others, United States Military Tribunal, Nuremberg*, 9 Law Reports of Trials of Law Criminals (United Nations War Crime Commission) 1, 19 (1949), the U.S. Military Tribunal stated:

“...responsibility of an individual for infractions of international law is not open to question. In dealing with property located outside his own State, he must be expected to ascertain and keep within the applicable law. Ignorance thereof will not excuse guilt but may mitigate punishment.”

In order to fully apprise the office of the prosecutor of the facts regarding the commission of war crime(s) against my clients I am providing the following exhibits:

- “The Continuity of the Hawaiian State and the Legitimacy of the *acting* Government of the Hawaiian Kingdom,” August 4, 2013, Legal Brief by David Keanu Sai, Ph.D. ([Attachment “F”](#)).
- War Crime Complaint (Gumapac), International Criminal Court, February 18, 2013, with attachments ([Attachment “G”](#)).
- War Crime Complaint (Bright), International Criminal Court, February 19, 2013, with attachments ([Attachment “H”](#)).
- Acknowledgment of Complaint from the Prosecutor of the International Criminal Court, March 4, 2013, (OTP-CR-63/13) ([Attachment “I”](#)).
- Complaint for the Commission of Felonies under Title 18 U.S.C. §2441, §1512(c)(2) and §372 respectively, Sheriff Division, Hawai‘i Section, April 10, 2013, without attachments ([Attachment “J”](#)).
- Complaint for the Commission of Secondary Felonies Under Title 18 U.S.C. §1512(c)(2) and §372, Hawai‘i Police Department, April 14, 2013, with attachments ([Attachment “K”](#)).
- Letter to Lieutenant Patrick Kawai, State of Hawai‘i Department of Public Safety, Sheriff’s Division, Re: *Commission of the War Crime of Pillaging*, July 12, 2013, with attachments ([Attachment “L”](#)).

The office of the prosecutor may not dispense with prosecuting these alleged criminal offences pursuant to Section 153f(2)(4) of the German Code of Criminal Procedure because the alleged suspects, herein, are not “being prosecuted before an international court of justice or by a state on whose territory the offence was committed.”

REQUESTED RELIEF:

On behalf of my clients, and considering the generally accepted view stated by your office in 2007 “that the most consistent possible worldwide prosecution of violations of international criminal law should be ensured militates in favor of carrying out investigations,”³ and in order to prevent the completion of the “pillaging” through the imminent removal of my clients from their home, I respectfully submit the instant complaint meets all requirements to assert jurisdiction. Therefore, pursuant to Section 6(9) of the German Criminal Code and Section 125 StPO, my clients formally apply for

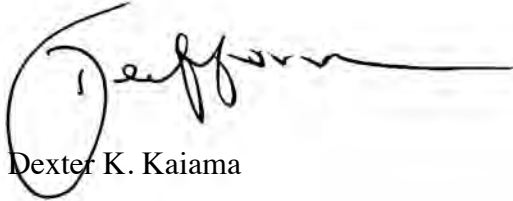
³ See the Prosecutor General’s remarks re: *Criminal Complaint against Donald Rumsfeld et al.*, dated April 5, 2007, and accessible online at: <http://www.ccrjustice.org/files/ProsecutorsDecision.pdf>.

arrest warrants to be issued by the judge at the Local Court in the city of Frankfurt, wherein DEUTSCHE BANK is headquartered, for war crimes herein committed by JÜRGEN FITSCHEN, ANSHU JAIN, STEFAN KRAUSE, STEPHAN LEITHNER, STUART LEWIS, RAINER NESKE, HENRY RITCHOTTE, GREG K. NAKAMURA, ESQ., CHARLES R. PRATHER, ESQ., SOFIA M. HIROSONE, ESQ., and MICHAEL G.K. WONG, ESQ.

Additionally, once the warrants for war crime(s) have been charged, my clients respectfully demand the alleged perpetrators in the Hawaiian Islands, namely GREG K. NAKAMURA, ESQ., CHARLES R. PRATHER, ESQ., SOFIA M. HIROSONE, ESQ., and MICHAEL G.K. WONG, ESQ., be extradited to Germany for prosecution to the full extent of the law under the Treaty between the United States of America and the Federal Republic of Germany concerning Extradition that has been in force since August 29, 1980 ([Attachment "M"](#)).

Furthermore, I request immediate formal action be taken by the office of the prosecutor to have DEUTSCHE BANK cease and desist the impending actions of Lt. PATRICK KAWAI, State of Hawai'i Department of Public Safety Sheriff's Department, to include his superiors and his deputies, to remove my clients from their home. My clients will cooperate fully with the prosecutor's office.

Sincerely,



Dexter K. Kaiama

enclosures

cc: Admiral Samuel J. Locklear III, USN
HQ USPACOM
Attn JOO
Box 64028
Camp H.M. Smith, HI 96861-4031

The Attorney General at the Federal Court

August 28, 2013

Re: Complaint for War Crimes committed under the German Code of Crimes under International Law

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International Criminal Court
Office of the Prosecutor
Communications
Post Office Box 19519
2500 CM The Hague
The Netherlands (Holland)

Office of the United Nations High Commissioner for Human Rights
Human Rights Council Branch-Complaint Procedure Unit
OHCHR- Palais Wilson
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland

CERTIFICATION

I, Dexter K. Kaiama, *Esq.*, attorney for the war crime victims, certify that the documents referred to in this Complaint, and hereunder listed as Attachments “A”-“I,” are true and accurate copies of the originals. The copies of these documents can be accessed online at the following URLs corresponding to the Attachments.

LIST OF ATTACHMENTS TO THE COMPLAINT WITH CORRESPONDING URL

Attachment

- “A” Treaty of Friendship, Commerce and Navigation and Consular Convention between the Hawaiian Kingdom and the Federal Republic of Germany, formerly the German Empire, March, 25, 1879. URL:
<http://hawaiiankingdom.org/pdf/Annex%2043.pdf>
- “B” The Hawaiian Kingdom’s accession to the Fourth Geneva Convention, January 14, 2013. URL:
http://hawaiiankingdom.org/pdf/GC_Accession.pdf
- “C” Kale Gumapac’s November 22, 2011, letter to Deutsche Bank’s servicing company, American Home Mortgage Servicing, Inc.. URL:
https://www.dropbox.com/s/7gpcz0phrsxb3wf/Gumapac_Ltr_Deutsche.pdf
- “D” Harris Bright’s November 25, 2011, letter to Deutsche Bank. URL:
https://www.dropbox.com/s/3q9p3wrwzrg3paw/Bright_Ltr_Deutsche.pdf
- “E” Laulima Title Search & Claims, LLC, Processor’s Report for Harris Bright. URL:
https://www.dropbox.com/s/vq64av2dr7odt51/BRIGHT_PROCESSORS%20REPORT.pdf
- “F” Brief by David Keanu Sai, Ph.D., “The Continuity of the Hawaiian State and the Legitimacy of the *acting* Government of the Hawaiian Kingdom,” August 4, 2013. URL:
http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf
- “G” Kale Gumapac’s War Crime Complaint, International Criminal Court, February 18, 2013, with attachments. URL:
<https://www.dropbox.com/s/otrxfx0hjnv0ak5/ICC.Complaint%20%28Gumapac%29.pdf>

- “H” Harris Bright’s War Crime Complaint, International Criminal Court, February 19, 2013, with attachments. URL:
<https://www.dropbox.com/s/axvubzhagim0hjj/ICC.Complaint%20%28Bright%29.pdf>
- “I” Acknowledgment of Complaint from the Prosecutor of the International Criminal Court, March 4, 2013, (OTP-CR-63/13). URL:
https://www.dropbox.com/s/vkvjg3cpi21tex2/ICC_Acknowledgment.pdf
- “J” Complaint for the Commission of Felonies under Title 18 U.S.C. §2441, §1512(c)(2) and §372 respectively, Sheriff Division, Hawai‘i Section, April 10, 2013, without attachments. URL:
<https://www.dropbox.com/s/3xlkxkh0vn62hkn/Title%2018%20Complaint.pdf>
- “K” Complaint for the Commission of Secondary Felonies Under Title 18 U.S.C. §1512(c)(2) and §372, Hawai‘i Police Department, April 14, 2013, with attachments. URL:
https://www.dropbox.com/s/sb8ex81hdt36a4u/HPD_Complaint.pdf
- “L” Letter to Lieutenant Patrick Kawai, State of Hawai‘i Department of Public Safety, Sheriff’s Division, Re: *Commission of the War Crime of Pillaging*, July 12, 2013, with attachments. URL:
https://www.dropbox.com/s/4hv62archicdng/Schwartz_Pillaging.pdf
- “M” Treaty between the United States of America and the Federal Republic of Germany concerning Extradition, August 29, 1980. URL:
<https://www.dropbox.com/s/mthzpals82fyd1f/Germany%20Extradition%20Treaty.pdf>

Attachment “A”

Wir Wilhelm,
von Gottes Gnaden
Deutscher Kaiser, König von Preußen,
etc. etc. etc.

erkennen und bekennen für und:

Weswegen Wir von dem zuwischen uns und dem
König von Hannover zur Befestigung
und Beförderung der zwischen dem Deutschen
Kaiser und dem König von Hannoverischen
Friede bestätigten freundschaftlichen Beziehungen
am 25. März 1879 zu Berlin und be-
zinsungsbefreiung am 19. September desselben
Jahres zu Honolulu unterzeichneten
Freundschafts-, Handels-, Schiffahrt- und Konsul-
fären-Vereinbarung, welche wörtlich also lautet:

Freunde

Freihandels-, Handels-, Schiffahrt- und
Konsular-Vertrag
zwischen
dem Deutschen Reich und dem Königreich der
Hannoverschen Inseln.

Seine Majestät der Deutsche Kaiser, König von
Preußen, im Namen des Deutschen Reichs einerseits
und

Seine Majestät der König der Hannoverschen Inseln
andererseits,

wow dem Kaiser geliebt, das gute Einvernehmen,
welches auf freier Weise zwischen Deutschland und
den Hannoverschen Inseln besteht, zu erhalten und
zu befestigen, die Entwicklung des Handels und der
Schiffahrt zwischen beiden Ländern zu fördern
und die Rechte, Privilegien, Immunitäten und
Verpflichtungen der beiderseitigen Konsularbeamten
festzustellen, haben sie sich einig gemacht, einen
Freihandels-, Handels-, Schiffahrt- und Konsular-
Vertrag abzuschließen und zu diesem Zweck zu
Ihren beiderseitigen Bevollmächtigten ernannt,
nämlich:

Seine Majestät der Deutsche Kaiser, König von
Preußen:

Oskar von Hildebrand, Ober-Regierungsrath
Dr. Johann Köning

und

und

Allerhöchste Frau Hofrathin Lagerlöb von Gern
mann Adolph Heinrich Albrast von Kresseront;

und

Seine Majestät der König der Hawaiianischen In-
seln:

Allerhöchste Frau außerordentlichem Hofrathin
und bevollmächtigtem Ministerin bei Seine
Majestät dem Kaiserlichen Kaiser, General
A. J. Carter;

welche nach gegenseitiger Uebereinkunft ihrer in ge-
wöhnlicher und gesetzlicher Form beschriebenen Uebereinkunft die
nachfolgende Artikel vereinbart und unterzeichnet
haben:

Artikel I.

Zwischen dem Kaiserlichen Kaiser und dem König-
reich der Hawaiianischen Inseln und zwischen den
Angehörigen und Bürgern der beiden Länder soll
fortwährend Freundschaft und Frieden bestehen.

Artikel II.

Die Angehörigen und Bürger der beiden Höfen
wirden in der That sollen überall in den beiden
seitigen Ländern sich aufhalten und wohnen dürfen
und sollen und vollkommenen Besatz für ihre Per-
sonen und ihre Eigenthümer genießen. Die sollen

gelesen

freiem und laiften Zutritt zu den gefatzlich beftandenen
Landgerichtsöfen haben, um ihre Reichthümer zu ver-
folgen und nachtheiliger zu können; fie follten auf
der Reichs herren Verweilung, Anweilung oder Abgang
zu weifen und fie daselben zur Nachfolgung und Nach-
theiligung ihrer Reichthümer vor solchem Gerichtsöfen
zu bedienen; und fie follten in dieser Beziehung diefelben
Rechte und Vortheile genießen wie die eingeborenen Augs-
fürer und Linger.

Die Augsfürer und Linger jedes der Markgrävlichen
Theile follten in den Gebieten das andere in Bezug auf
die Rechte des Hofesitzes, den Lehen von Grundbesitzern,
Gütern und Effekten aller Art, in Bezug auf die Erbschaften
in den Grundbesitzern oder das besagliche Vermögen durch
Erbrecht oder auf andere Weise und in Bezug auf die
Nachfolgung über Lehen jedes Art und in irgendwel-
cher Weise die nämlichen Vortheile, Freisheiten und Frei-
heiten genießen und mit denselben Gebieten und Abgaben
in genannten Beziehungen unterworfen sein, wie die
eingeborenen Augsfürer und Linger.

Bei dem, welche von dritteln Reichthümern auf
den hiesigen Inseln und von Augsfürern der hiesigen
Inseln in Deutschland geflossen werden, nicht auf
die Form der Erbschaften nach den Gefetzen des Landes,
das in welchem die Erbschaften geflossen wird.

Die Angehörigen und Bürger eines jeden der
höchsten Staatsgewalten sollen im den Gebieten des
Landes vollkommenen Gewissensfreiheit, sowie Freiheit
der privaten oder öffentlichen Abhaltung ihrer Gottes-
dienste und alle die Garantien, die Rechte und den
Besitz genießen, welche den eingeborenen Angehöri-
gen und Bürgern oder den Angehörigen und Bürgern
irgend einer anderen Nation gewöhnlich gewährt
sind oder künstlich gewährt werden mögen. Diese
Freiheit und dieser Besitz soll sich auf alle Rechte er-
strecken, ihre bündelartigen Landbesitzverhältnisse, sowie
größere Gebäuden auf angrenzenden und passanten
Flächen zu bewahren, welche sie zu diesem Zweck aus-
legen und unterhalten dürfen, immer in Gemäßheit
der lokalen Gesetze und Vorschriften.

Die Angehörigen und Bürger eines jeden der höch-
sten Staatsgewalten, welche im Gebiet des Landes wohnen,
sollen von jedem zwingenden Militärdienst
sowohl zur See als zu Lande, und von allen Zwangsver-
richtungen oder militärischen Leistungen und Requisitionen
befreit sein, und sollen sie nicht gezwungen
werden, unter welchem Vorwand es auch sei, unter
oder sonst irgendwelcher Art Abgaben, Requisitionen
oder Diensten zu befragen, als jetzt oder künftig
von eingeborenen Angehörigen und Bürgern ge-
fordert werden.

Sie sollen keinen Leibarbeitsvertrag sein,
noch mit ihrer Person, Mannschaften, Leuten
oder Handwerksleuten zu verbinden werden, und für
irgend eine militärische Unternehmung oder für ir-
gend welche öffentlichen oder privaten Dienst an-
zuwenden zu werden, es sei denn daß die Regierung
oder Lokalbehörden mit den betreffenden Personen über
die Entschädigung sich vereinbart haben, welche
für einen solchen Dienst zu gewöhnlich, und
über die Vergütung, welche billigerweise für den
mit dem freiwillig angenommenen Dienst
auszuentschädigen Personen (darnach sein zu billig
ist) gefordert werden kann.

Artikel III.

Jeidische der Gabanten der Hofen Markengarten
Gärten soll gegenwärtige Strafen der Handelt und der
Personen bestrafen.

Die Angehörigen und Leuten der beiden Mark-
engarten Gärten sollen bestraft sein, überall in den
bestimmten Gabanten zu wohnen, sowie Häuser und Ma-
gazine zu mieten und inne zu haben, sie sollen Gewerke,
Salz und Kleinfandel mit allen Arten von Früchten, Ge-
wässern und Wärdern der gesetzlich erlaubten
Marken betreiben dürfen, ohne irgend ein Mo-
nopol, einen Vorzug oder ein unbilligliches Vorrecht

zu

zum Kauf und Verkauf eingeschränkt oder befristet
liegen zu werden, indem sie mit den Gesetzen, den po-
lizeilichen und zollrechtlichen Anordnungen des Landes,
wie die eingeborenen Augaförigen und Lirger unterwor-
fen sind.

Sie sollen befugt sein, frei und sicher mit ihren
Schiffen und deren Ladungen nach allen den Häfen,
Börsen und Flüssen in dem Gebiet des andern zu kom-
men und zu gehen, welche dem fremden Handel öffent-
lich sind oder künftig werden geöffnet werden; sie
sollen auch befugt sein, daselbst unter denselben Be-
dingungen, wie die Eingeborenen oder die Augaförigen in-
ganz oder andern Nation die von ihnen von irgendwelch
importierten Waaren ganz oder theilweise abzuholen und
ganz oder theilweise ihre Rückfracht anzunehmen und zu ver-
vollständigen. Diese Befugnisse soll indessen nicht auf den
Küstenhandel Anwendung finden, welche die Hofen des
Königlichen Theils sich vorbehalten, durch die Gesetze ihrer
beiderseitigen Länder zu ordnen; dies ist jedoch zu ver-
stehen, daß die Augaförigen und Lirger des Hofen des
Königlichen Theils nicht in diesem Hinsicht die Rechte
genießen sollen, welche unter solchen Gesetzen des Au-
gaförigen und Lirger irgend einer andern Landes ge-
wisst sind oder künftig sein oder gemist werden sollten.

In einem Hofen der beiderseitigen Länder sollen

unter

andere oder sößere Abgaben oder Gaben an Lamm-
gältern, Länst. oder Hofenabgaben, Lootfanggaben,
Fischerzinsenabgaben, Leuzgölfer bei Käufjäten oder Piff-
büß, oder andere örtliche Gaben ansonst, als
von Piffen das Land, zu daffem Gaben solche Hofen
gaben zu schreiben sind; und um diese Gaben um
dem Lammgältern zu berechnen, sollen die Piffregisten,
in dem dem Lammgältern nach dem gänzlich von bei
dem Ländern angenommenen Normenmäßigen und
gültigen werden müß, als nachgaband angenommen werden
inbetracht, irgend welcher durch die Normenmäßigen
der beidenseitigen Länder bestimmten Gütern oder Ab-
gaben.

Es ist vornehmlich, daß die Piffen oder fäufliche Piffen,
wenn sie unter der Flagge ihrer Länder gehen und mit
dem nach dem Gältern ihrer Länder sofortlichen Piffen,
von und den Ländern nachgeben sind, für die Zwecke die-
ser Arttrag als solche Piffen anzusehen werden sollen,
als welche ihrer Flagge und ihrer Piffen sie nicht weichen.

Die beiden Hofen Arttragenden Teile können
nichtweilich dieser überaus, daß jede Ungültigkeit,
jede Gewalt oder jede Entziehung, welcher Art sie
auch sein, welche in Betracht das Land und den
Kauf oder der Piffen (inbetracht das was in
müßigen Fällen, oder solchen anderen Umständen,

welche

walken sie durch Gesetz und pflichtlich ihren beiderseitigen Augensörigen oder Lirigen vorbehalten mögen) inner von ihnen den Augensörigen oder Lirigen ihr eigenem überigand eines dritten Landes gegenseitig zu weisen soll oder künstlich gemacht werden mögen, den Augensörigen und Lirigen das unteren Spiel unter demselben Bedingungen und Vorschriften zu Spiel werden soll, und zwar ohne Entgelt, wenn eine solche Vereinbarung unentgeltlich erfolgt sein sollte, oder (unabhängig von dem in den folgenden Artikeln beschriebenen Vertrag der Zollabgaben) wenn die Vereinbarung eine bestimmte Gegenstände sein sollte, gegen eine entsprechende Pflanzliche durch beiderseitiges Abwinkommen festgesetzte Entschädigung von möglichst gleichem Markt und Ursprung.

Artikel II.

Bei der Einfuhr auf den hiesigen Inseln sollen auf keinen in demselben Reich versorgabreichten, erzügten oder verfertigten Gegenstand, und bei der Einfuhr in das deutsche Reich sollen auf keinen auf den hiesigen Inseln versorgabreichten, erzügten oder verfertigten Gegenstand unter oder solchen Zölle gelegt werden, als von dem gleichartigen Gegenständen zu entrichten sind, welche in irgend einem fremden Lande versorgabreicht, erzügt oder verfertigt wird.

aus

Auf die Aebfische beim Jagungslandes mit dem Gebieten das man nach dem Gebieten das andere dem Nachtragenden Thier sollen keine andere oder sonstige Gölle gälte werden, als bei der Aebfische das gleichzeitigen Jagungslandes nach irgend einem anderen fremden Lande jätzt oder in Zukunft zu antworten sind.

Artikel V.

Auf die Fische beim in dem Gebieten dem Nachtragenden Thier Jagungslandes, erzüchten oder nachfarligten Jagungslandes in dem Gebieten das andere soll ein Verbot gälte werden, welches nicht gleichmäßig auf die Fische das namentlich, in jedem anderen Lande Jagungslandes, erzüchten oder nachfarligten Jagungslandes sich erstreckt, unabhängig davon das beidenseitigen Landes, mit gegenseitigen politischen Gründen der Fische bestimmt Artikel mit dem Gebieten das andere Nachtragenden Thier zu antworten.

Ebenso wenig soll die Aebfische beim Jagungslandes mit dem Gebieten beim dem Nachtragenden Thier nach dem Gebieten das andere verboten werden, wenn das Verbot nicht in gleicher Weise auf die Aebfische das namentlich Jagungslandes nach dem Gebieten aller anderen Nationen sich erstreckt.

Artikel VI.

Jeder Jagungsland, welches in dem Gebieten beim jedem

Der beiden Markgrauen Afala jetzt oder künftig
von Lünebörnen oder fremden Markgrafen und Lüne-
börnen gesetzlich eingekauft worden darf, soll bei der
Einkauf deselben die nämlichen Abgaben und Löhne, wie
diese Einkäufe in Dänemark oder in fremden Schiffen erfolgen.
Für jeden Jagarstand, welcher aus dem Gebiet nicht der
Markgrauen Afala jetzt oder künftig von Lünebörnen
oder fremden Markgrafen und Lünebörnen gesetz-
lich eingekauft worden darf, sollen bei der Rückgabe
von dort nur die nämlichen Abgaben zu beweisen sein,
und die nämlichen Vergütungen und Rückgölle genehmigt
werden, wie diese Rückkäufe in Dänemark oder in fremden
Schiffen stattfinden.

Waren, die auf Dänemark oder fremden Schiffen
verladen sind, oder von beidenseitigen Kaufleuten
und Lünebörnen gekauft, sollen in den Häfen der beiden
Länder nicht nur auf einem heimischen Lünebörner, oder
irgend einem fremden Hafen bestimmt abgesetzt werden,
sondern werden dürfen, immer in Gemeinschaft der Zoll-
ämter beider Länder, und die für fremde Häfen unzulässigen Güter sollen von
allen Zoll- und Lagerabgaben befreit sein.

Jagarländer oder Bot, welche auf dem Landweg von
einem der beiden Länder oder von einem der beiden be-
griffen sind, sollen beim Durchgang durch die Gebiete

das

Das andere Sachhofen Markgrauen Thale, so ob
dem Saxthalen Markgrauen oder zum Gerst der Rüt-
schiffen, alle die Markthale gemeinlich, welche unter den
gleichem Umfänden eigentlicher anderer Nation
zu Thail worden.

Artikel III.

Die Kriechschiffe, die Meer- gesörige Schiffe,
Kochschiffe und Mollschiffen so die unter der Mark-
grauen Thale sollen freier Zutritt zu allen, den
gemeinlichen Schiffen, Flüßen oder Flößen das andere seyen,
welche dem fremden Handel geöffnet sind; ob solli-
che gestattet sein, dieselbe sich anzusehen, Regieren
daran vorzunehmen und ihre Mannschaften und Vorräte
zu ergänzen. Die sollen denselben Abgaben, Kochschif-
fen, Gesetzen und Anordnungen unterworfen sein und
in jeder Beziehung dieselben Rechte, Vorzüge und Frei-
heiten genießen, welche für Schiffe gleicher Art eigent-
licher anderer Nation jetzt bestehen oder künftig bestan-
den werden, beziehungsweise jetzt gewährt sind oder
künftig gewährt werden sollten.

Artikel IV.

Alle Schiffe, welche die Deutschen oder die schwedischen
Kriegsschiffe, sollen in Kriegzeiten in den Häfen
und Gewässern der beiden Länder allen möglichen
Besitz verlassen, soweit die oben erwähnten sind.

saligkitten gesehene Mann, und jedex der hohen
Antragenden Theile verpflichte sich, unter allen
Umständen die mittelbare Rechte der Freyge und der
Gebiete das andere zu rufen.

Artikel IX.

Zur grösseren Versicherung das Handelsgewerbes
der baidenseitigen Augensöhnen ist vereinbart, dasz,
wann insonderheit Waife einmahl eine Unternehmung
das fremdpersönlichen Gewerbes gewerben der bii-
den Antragenden Theile Platz greifen sollte, der Au-
gensöhnen jedes derselben eine einjährige Frist gewährt
werden soll, um ihre gesetzlichien Bedingungen abzu-
schliessen und über ihre künftigen Handlung zu treffen,
wief soll ihnen sieweil Zeit gegeben werden, um sich
in einem von ihnen selbst zu wählenden Orte anzue-
sessen. Alle Augensöhnen jedes der beiden Handlungen,
der Theile, welche im Gebiete das andere Theile mit
ihrem Handelsgewerbe, oder einer bestimmten Thätigkeit
beschäftigt sind, sollen in einem solchen Falle das Recht
haben, zu bleiben und ihre Gesetzlichien und ihre Thätigkeit
ohne Unternehmung und in vollem Genusse ihrer Frei-
heit und ihres Eigenthums fortzusetzen, so lange
sie sich freundlich verhalten und die Gesetze nicht
verletzen; wief sollen ihre Waifen und Effekten, welche
für das sie wief seien, mögen sie sich in ihrem eignen

frei utskilt worden, und nach Umräumung dieser Orte
Kirche sollen dieselben sofort und unbeschadet von den
Landesbeförden in den Gärten, Wäldern und Flößen jedes
Aussitzes und Ausschusses, desgleichen seiner Gewichte, oder
Kornausbehaltsbeförden, zum Ganzen der ihnen beiderseits
zugehörigen Kornsorten zugelaufen werden. Die durch
Gegensätze und feindliche Räumung besetzt sind die Punkte
nur, diese Gegensätze zurückzunehmen, und zwar unter
Verlegung der Kirche, und davon sie ab für ungenutzbar
ausgesagt hat, so zu fundeln.

Artikel XII.

Die wiss. Generalkonföderation, Konföderation, Regalkonföderation
oder Konföderation sollen in beiden Ländern alle Kornsorten, Leinwand,
Freiungen und Immunitäten genießen, welche den
Ländern desselben Rang der meistbegünstigten Nation
bewilligt sind oder in Zukunft bewilligt werden. Kon-
föderation, welche nicht Angehörige des Landes sind, wo
sie befreit sind, sollen in dem Lande, wo sie ihren Sitz
haben, persönliche Immunität von Arrestierung oder Gefangenschaft,
Verhaftung genießen, ausgenommen im Falle von Not-
bedürfnis; sie sollen jedoch von Militär- Einquartierung
und Kontributionen, von Plünderungen aller Art
und von anderen öffentlichen Lasten, sowie
von allen Steuern oder persönlichen oder Liebesgaben,

Leihdingen und Leihdingen frei sein. Wenn aber
die gedachten Konsularbeamten in dem Lande, wo
sie ihren Amtssitz haben, Gründungsämter sind oder
werden, oder gewerbliche Geschäfte betreiben, so sollen sie
denselben Abgeben und Auflegen und denselben ge-
richtlichen Verfahren unterworfen sein, wie die dem
Landesangehörigen Gründungsämter und Konsulate.
Unter keinen Umständen jedoch soll das Einkommen
von ihrem Amte irgend einer Abgabe unterliegen. Kon-
sularbeamte, welche kaufmännische Geschäfte betreiben,
sollen nicht auf ihre Konsularrechte Anspruch haben,
um sich kaufmännischen oder anderen Verbindlich-
keiten zu entziehen. Konsularbeamte jedoch werden die
Rechte sollen in keinem Falle in der Ausübung ihrer
amtlichen Handlungen weiter geschädigt werden, allgütige
Handhabung der Landesgesetzgebung insonderlich ist

Artikel XIII.

Generalkonsule, Konsule, Vikarkonsule und Kon-
sulatsagenten können über dem vorkommenden Ereignisse ihrer
Amtsräume oder ihrer Residenzen das Wappen ihrer
Nation mit einer ihr Amt bezeichnenden Aufschrift
bringen. Auf denselben die Flagge ihres Landes
auf dem Konsulatsgebäude aufhängen, insbesondere
in solchen Fällen, wo sich eine Gesandtschaft ihres Landes
das befindet. Dergleichen können sie ihre Flagge

auf

auf jedem Fußwege auszuweichen, dass sie sich im Ge-
heim heimlich zu konföderirten Parteien verbinden.

Artikel XIV.

Die Konföder. Offiziere sollen jederzeit unerschüt-
tlich sein, und unter keinem Vorwand soll es dem Lande
befördert werden sein, die Feinde, welche zu diesen
Parteien gehören, zu verfolgen oder mit Befehl
zu belegen. Derselbe ein Konföder. Beamter unter
Gefahr, so sollen die auf das Konföder. bezüglichen
Regierungsunterverordneten Anordnungen, gebunden
von seinen Privatgeheimnissen, außer Acht werden.

Artikel XV.

Im Falle des Todes, der Verwundung oder Ab-
wesens der Generalkonföder., Konföder., Vizekonföder.
und Konföder. Agenten dürfen deren Könige oder Statthalter,
wenn sie amtliche Berichte zuvor zur Kennt-
nis der betreffenden Mächte oder französischen Partien
gebracht worden ist, zeitweilig davon Antheilnahme
nehmen, und sie sollen während dieser Antheilnahme
alle Rechte, Vorrechte und Immunitäten genießen,
welche durch diese Abwesenheit ihrer Titelaren zu-
gekündigt sind.

Artikel XVI.

Die Generalkonföder. und Konföder. sollen mit Ge-
samkeit ihrer resp. Regierungen Konföder. Beamter,

wasar ulb ifra Hallsvervater im Besondere in dem
widerständigen Abwaschen, und Konsularen
in dem Herten, Gehen und Gehen insofern ifra
Konsularen bezist bestallen diesen. Solchen Konsularen
waser von oder Konsularen soll von dem Konsul
der sie bestallt, oder von dessen Regierung eine Beschei-
dung ertheilt werden. Jedem so bestallte Hallsvervater
soll gemäß dem Artikel XI. und XII. konsularische
Merkmalen gemessen, widerstand Konsularen als
Abwaschen das Konsul zu bescheiden sind, unter dessen
Verantwortlichkeit sie fungieren.

Artikel XVII.

Genetikon, Konsul, Vizekonsul und Kons-
ularen sollen das Recht haben, Befehl der Abhilfe
irgend einer Verletzung der zwischen beiden Ländern
bestehenden Verträge und Abkommen oder der
Völkerrechte, an die in ihrem Ausbezirk fungierenden
Gesandten der bezüglichen Länder, dieselben seien Genetikon
oder Konsul. Gesandten, sich zu wenden, Abhilfe
von den gedachten Gesandten zu verlangen und an dieselben
Aufträge zum Befehl der Kaiserin und Fürstinnen ihrer Länder
Länder zu richten, insbesondere in Fällen der Abwaschen
dieser letzteren oder jeder gesetzlich anerkannten der-
selben, in welchen Fällen die Konsul in. f. w. ulb
die gesetzlich anerkannten der Abwaschen angehen

werden sollen. Wenn ein solches Aufsehen die gebräuch-
liche Gewöhnung nicht fördert, sollen die vorerwähnten Kon-
sularbeamten, falls ein diplomatischer Charakter ihrer
Tätigkeit nicht vorausgesetzt sein sollte, sich unmittelbar an die
Regierung des Landes, wo sie ihren Sitz haben, wenden
zu dürfen.

Artikel XVIII.

Generalkonsule, Konsule, Vikarkonsule oder Kon-
sularagenten der beiden Länder oder deren Könige sollen,
soweit sie nach den Gesetzen und Verordnungen ihrer
Landes dazu befugt sind, die Post haben,

1. in ihren Ambassaden oder Wohnungen, in den
Wohnungen der Botschaften oder an Bord der Na-
tionalposten die Erklärungen der Befehlshaber,
der Befehlsmannschaften, der Befehlspostmeister,
von Konsulaten oder sonstigen Angestellten ihrer Lan-
des abzugeben.

2. in persönlichen und schriftlichen Ver-
richtungen ihrer Konsulate, ingleichen in Verträgen,
wahrheitsgemäßen Angestellten ihrer eigenen Landes,
sowie in diesen und Angestellten oder
anderen Einwohnern des Landes ihrer Amtsführung
geschloffen werden, aufzunehmen und zu belegen
lassen; nicht minder alle Verträge zwischen Fran-
ken und der letzten Türkei, soweit solche

Wart.

Wahlbürgen auf ein im Gebiete der Nation, welche
die gedachten Konsularbeamten werden, be-
zogenes Grundrecht sein oder auf ein dafalls ab-
zusperrtes Recht gestützt sein bezogen. Es soll jedoch
keine Bestimmung dieses Artikels an den Gewerkschaften
Vorstellungen in Betreff der Arbeitsverhältnisse aus-
üben.

Alle solche Wahlbürgen und andere Akte, sowie Abschriften
und Abdrücke von denselben sollen, wenn sie von dem Ge-
meinderath, Rath, Magistrat oder Konsularbeamten ge-
fertigt, beglaubigt und mit dessen Amtssiegel versehen sind,
von den öffentlichen Beamten und den Gerichtshöfen als öffent-
liche Akte, beglaubigte oder beglaubigte Abdrücke,
oder Abschriften angesehen werden, und sie sollen die-
selbe Kraft und Wirkung haben, als wenn sie von den Be-
amten öffentlich bekannt und im oder außerhalb
der beiden Länder aufgenommen oder beglaubigt wären.

Artikel XIX

Im Falle, daß ein Augenschein der deutschen Reichs-
auf den Gewerkschaften Tuzulu, oder daß ein Augenschein
der Gewerkschaften Tuzulu im deutschen Reich haben
sollen, oder in dem Lande sind bezogen. Ist es Abhandlung
bekannt oder von ihm bezogen. Von ihm bekannte
Gesamtheit der Akte zu hinterlassen, so sollen die Kom-
missionen Landabfertigung der deutschen Konsularbeamten

Der Nation, welche der Herrscher anvertraut, von die-
sen Umständen alle bald in Kenntnis setzen, damit die
notwendige Levensversicherung der beständigsten Personen
unverzüglich übermittelte werde.

Der gedachte Konsul oder Bevollmächtigter soll das Recht haben,
gesondlich oder durch seinen Levensversicherung bei allen
Kontrollierungen für die oben genannten Leben oder Gläu-
biger anzusehen bei diesen einen Levensversicherung an-
zuordnen. Auf soll es, wenn es für zweckmäßig
ersucht, der Herrscher der Herrscher zu Gunsten der
gesetzlichen Leben und der Gläubiger gemäß der Ge-
setze der Länder, in welchem sich der Todfall er-
eignet hat, gesondlich anzuordnen dürfen. Zu diesem
Zweck soll die Levensversicherung von dem zuständigen
Gericht so beschaffen, und es soll sein, wenn kein an-
derrätiger Levensversicherung vorhanden kann, solche Le-
vensversicherung bestellt werden. In allen Fällen sollen die
Angehörigen eines jeden der Anwesenden Teile in dem
Gebiete der anderen Teile mit denjenigen Abgaben aus-
wissen, welche sie anzuordnen müssen, wenn sie Angehörige
derjenigen Länder werden, in welchem der Herrscher sich be-
findet oder die gesondliche Verwaltung desselben bestanden.

Artikel XX.

Der Generalkonsul, Konsul, Vizekonsul und
Konsularen der beiden Länder soll sich gegenseitlich

ein

Die Inverkehrführung und Verfallsung der Güter und
Fugensünde jeder Art zu, welche von Schiffbläuten
auf Schiffen ihrer Nationalität, sei es, daß sie an Bord
der Schiffe oder an Lande, während der Fahrt oder
im Bestimmungslande sterben, oder von Schiffbrüch-
lingen, solange sie zum Schiffe gehören, hinterlassen
sind.

Artikel XXI.

Die Generalkonsule, Konsule, Vikarkonsule und
Konsularagenten können sich in Person an Bord der zum
freien Markte zugelassenen Schiffe ihrer Nationalität
begeben oder einen Bevollmächtigten an Bord schicken,
um die Offiziere und Mannschaften zu examinieren, die
Schiffbrüchlinge anzufassen, die Erklärungen über ihre Reise,
ihren Bestimmungsort und die Zwischenfälle während der
Reise anzugehen zu lassen, Ladungsbeschreibungen (Manifeste)
anzufassen, den Eingang und die Abreise ihrer Schiffe
zu fördern, und sich mit den gedachten Offizieren und Mann-
schaften nach dem Gerichts- oder Verwaltungsbefehl des
Landes zu versetzen, um ihnen als Dolmetscher oder Agenten
zu dienen. Falls ein Schiff in dem Hafen eines der beiden
Staate wegen Verletzung der Zoll- oder anderen Ge-
setze in Laßlag genommen oder zurückgehalten wird,
müssen die gedachten Konsularbeamten nach dem Befehl
des rechtszeitig benachrichtigten Landes, damit sie bei

jetzt

jedem sündlich das betreffende Pfliff norga,
nominieren Harfseren güngaren sein und den Offi-
ziaren oder den Mannschaften vor den Gerichten oder
irgendwelchen Obbeständen Leihend leihen können.
Denen Missethätigen dergleichen Strafen oder
ihres Privilegiums kann in ihrer Abwesenheit in der
Reise norgayung werden.

Artikel XXII:

Den Generalkonsulen, Konsulen, Vizekonsulen oder
Konsularenagenten steht ausdrücklich die Aufsicht,
süß der inneren Ordnung an Bord ihrer natione-
len Handelsschiffe zu. Die selben Sanktionen Wei-
sigkeiten jeder Art, sei es auf hoher See, sei es im
Hafen, greifen den Pfliffbüchern, den Offizieren
und Matrosen zu schickten, insbesondere auf Wei-
sigkeiten, welche sich auf die Güter und die Perso-
nen sonstiger Handelsbestimmungen beziehen. Man
dar ein Gerichtlich noch eine andere Lesende soll im,
der irgend einem Kommando sich in solch Wichtigkeit,
den missen dürfen, nicht in Fällen wo die an Bord
vorhandenen Wichtigkeiten der Art sind, dass
Ordnung der Reife und öffentliche Ordnung im
Hafen oder an Lande gestört wird, oder wenn
andere Personen als die Offiziere und Mannschaften
das Pfliff an den Unordnungen oder Wichtigkeiten

betheiligt sind. Mit Rücksicht auf die vorerwähnten Fälle sollen die Landabfahrten sich darauf beschränken den Konsulen wirksame Hilfe zu leisten, wenn diese darum nachsuchen, um diejenigen Personen zu erfassen und gefangen zu halten, deren Name in der Disziplinrollen eingetragene sind deren Festhaltung jene für erforderlich ansehen. Diese Personen sollen nicht ohne schriftliche, an die Landabfahrten gerichtete und von einem beglaubigten Stückzeuger mit dem Disziplinregister oder der Disziplinrolle beglaubigte Aufforderung erfassen und während der ganzen Zeit der Rückkehr das Disziplinregister im Hafen zur Verfügung der Konsulen festgehalten werden. Ihre Freilassung soll nur in Folge eines schriftlichen Bescheides der zuständigen Konsulen erfolgen. Die Kosten der Verhaftung und der Festhaltung dieser Personen sollen von den Konsulen getragen werden.

Artikel XVIII.

Die Generalkonsulen, Konsulen, Vizekonsulen oder Konsularenagenten können die Disziplin-Offiziere, Matrosen und alle anderen zur Besatzung der Krieg- oder Handelsfahrzeuge ihrer Nationalität gehörigen Personen, welche der Defektion von den gedachten Disziplinen schuldig oder angeklagt sind, festnehmen lassen, um dieselben an Bord oder in ihrer Heimat zu fassen. Zu diesem Zweck sollen die Landabfahrten Konsulen auf den holländischen Inseln und die Konsulen der holländischen Inseln in Dienstleistung an irgend

eines der Konventionen Beförden bezüglich des Aufstehens
ein Gesandtschaftsmitglied, begleitet von einem amtlichen
Ausschuss aus dem Reichsregiment und der Militärrolle oder
von anderen amtlichen Behörden, welche geeignet sind zu
beweisen, dass die Leute, deren Abreise sie verlangen,
zu den gedachten Befehlsmannschaften gehören. Auf ein
Ausgehalt begründetes Gesuchen, und ohne dass es einer Be-
urteilung der Konsuln bedarf, sollen die Befehlsmannschaften
ausgesagt, dass dieselben weder zur Zeit ihrer Einreise
noch zur Zeit ihrer Abreise in irgend einem der
Landes sind, wo der Abreiseverlangen ge-
schehen, noch auf einem (Kontinent oder Kontinenten,
Kontinent oder Inseln sind) an die Konsuln abgeleitet
werden. Jeder Hilfe und jeder Befehl soll denselben ge-
währt werden bei der Abreise, Expedition und Ein-
führung der Befehlsmannschaften, welche in die Gefängnisse
des Landes gebracht und dort auf Gesuchen und auf Kosten
der Konsuln so lange festgehalten werden sollen bis die
gedachten Konsuln ein Verlangen, zu ihrer Fortführung
gefunden haben werden.

Wenn jedoch ein solches Verlangen innerhalb eines Zeit-
raums von 6 Monaten vom Tage der Gefangennahme
ausgeht, sich nicht finden sollte, so werden die Befehlsmann-
schaften freigelassen und aus dem nämlichen Grund nicht
weiter festgenommen werden.

Art.

Artikel XXIV.

Falls nicht Verhandlungen zwischen Pfordern, La-
frachtern und Ansehern ausgehandelt sind, werden
alle während der Fahrt der Schiffe beider Länder solches
an Grenzen, wie ob, durch die Schiffe in den Häfen
freiwillig oder als Notthun einlaufen, von dem General-
Konfiskat, Konfiskat, Nichtkonfiskat und Konfiskatanten
der betreffenden Länder reguliert. Sollte jedoch der ge-
meine Generalkonfiskat, Konfiskat, Nichtkonfiskat oder Konfiskatant,
wegen beiderseitiger oder einer für das betreffende Schiff
oder dessen Ladung sein, oder Landbesitzer sein oder
Angesessener einer dritten Macht bei der Reise beiderseitig sein,
so müssen in Ermangelung einer gültigen Einigung zwi-
schen allen Beteiligten die Grenzen von dem Lande,
besonders reguliert werden.

Artikel XXV.

Wenn ein der Regierung gesessenes Schiff oder ein
Schiff eines Angesessenen eines der Ansehenden Thale
an der Küste des anderen Thales Schiffbesitzer oder
Besitzer, so sollen die Lokalbehörden des Generalkonfiskat,
Konfiskat, Nichtkonfiskat oder Konfiskatanten des Landes,
oder wenn ein solches nicht vorhanden ist, der Ort
des Urfalles nächster Generalkonfiskat, Konfiskat, Nichtkon-
fiskat oder Konfiskatanten davon benachrichtigen. Alle
Rettungsmaßregeln bezüglich solcher Fälle in den

Tartu

Territorial Gemässen das Deutsche Reich gaschaidet,
das aber gach dem das Reich soll die nach Maßgabe der
Deutschen Gesetzgebung, und im Einklang soll die alle
Rechtsgemeinschaft in Bezug auf die Deutsche in dem Territo-
rial Gemässen der gemeinsamen Sprache gaschaidet
oder gach dem das Reich in der gemeinsamen Sprache der
gemeinsamen Sprache gaschaidet, die Konsultations-Verordnungen
sollen in beiden Ländern nicht eingeleitet sein, und die
auf Verbesserung oder Abänderung der Ordnung oder in
sonstigen Fällen auf die Verwaltung der gaschaideten oder
gemeinsamen Reichs bezüglichen Maßregeln zu über-
nehmen, und dann nicht in Betrachtung der be-
stehenden Personen, ihrer Angehörigen oder Abgaben.
Für die Eingeleitung der Landesbesörden dieser Art
andere Kosten zu setzen werden, alle solche, welche in
gleichem Maße die National-Reichs zu betrachten sollen.

Ist die Nationalität nicht unangehörigen Reichs
gewisshaft, so sind die Landesbesörden nicht eingeleitet
für alle in dem gemeinsamen Reichsgesetz
Maßregeln zu handeln. Alle Maßen und Gesetze,
welche nicht zum Nutzen in dem Lande in vol-
lem die Reichsrechtlich bestimmt sind, sollen
nicht von jenen Abgeben, jedoch die Verhandlungen über
sich selbst nicht in Betrachtung sein.

Artikel

Artikel XXVI.

Das gegenseitige Kartell soll nach dem Ablauf
des Ratifikationsverfahrens in Kraft treten. Damit
die beiden Kartellparteien ihre Pflichten zu
solchen Abänderungen oder anderen Veränderungen zu
verfügen und zu vereinbaren, welche den Kartellvertrag
ihre gegenseitigen Pflichten oder die Entwicklung der
Kartellverhältnisse in irgendeiner Hinsicht betreffen,
so ist man übereingekommen, daß jeder der Kartell-
parteien ihre zu irgend welcher Zeit nach dem 31. Juli
1882 dem anderen seine Absicht kundzugeben kann, die
Artikel IV und V des gegenseitigen Kartellvertrages oder
den ganzen Kartellvertrag aufzugeben, und dies mit Ablauf
von 12 Monaten nach dem Tage solcher Kündigung die
genannten Artikel (wenn die Kündigung sich nur auf
diese beziehen sollte) oder den gegenseitigen Kartellvertrag
(wenn die Kündigung sich auf ganzes beziehen sollte) mit
alle darin enthaltenen Bestimmungen aufheben sollen,
für die beiden Kartellparteien bindende Kraft
zu haben.

Artikel XXVII.

Das gegenseitige Kartell wird sich auf alle
großhandelshandlungen beziehen, so lange das
selbe zum deutschen Zollgebiet geführt.

Artikel

Artikel XXVIII

Der vorgenannte Vertrag soll ratifizirt, und die Ratifikationen sollen bis zum 31. Juli 1880 oder früher, wenn dies möglich ist, in Berlin rückversandt werden.

Zu Urkund dessen haben die beiderseitigen Bevollmächtigten denselben unterschrieben und unterschrieben.

So geschehen zu Berlin, den 25. März 1879, und zu Honolulu, den 19. September 1879.

(L. S.) Johann Köning Dr.

(L. S.) H. von Kusselort.

(L. S.) Henry A. P. Carter.

Besondere Artikel.

Der ob erwähnte gewisse vorbestimmte Ausschluss und andere Bestimmungen für diejenige Regierung von Louisiana gemacht ist, mit der Regierung der Vereinigten Staaten von Amerika durch eine zu Washington am 30. Januar 1875 geschlossene Abvorkauf in wechselseitige Beziehung zu treten,

so sind die hohen Vertragsparteien übereingekommen, dass die keine Stelle die besondern Rechte, welche durch die gedachte Abvorkauf der Vereinigten Staaten von Amerika in Cuba nicht ausgesprochen der Rechte gewahrt worden sind, zu Gunsten der

ja

janigen Leuzinsüngen beauftragt worden sollen,
welche gewislich den beiden Hofen Markgrafen
Ysidor d'ors den ehrenwürdigen Markgr. b'g'm,
hat worden sind.

Der ehrenwürdigen besondern Akte soll
dieselbe Kraft und Geltung haben, als wenn er
Mort für Mort in den selben Instanzinstanzen
Markgr. persönlich wären und soll zu gleicher
Zeit ratifizirt werden.

Zu (Mort d'ors) haben die beiden Hofen
den Leuzinsüngen denselben Instanzinstanz
und und Instanzinstanz.

Die gesagten zu Berlin, den 25. März 1879 und
zu Genöve, den 19. September 1879.

(L.S.) Johann Rösing Dr.

(L.S.) G. von Küsserow.

(L.S.) Henry A. J. Carter.

*Treaty of Friendship, Commerce and Navigation
and Consular Convention
between
the German Empire and the Kingdom of the
Hawaiian Islands.*

*His Majesty the German Emperor, King of Prussia,
in the name of the German Empire on the one part
and*

*His Majesty the King of the Hawaiian Islands
on the other part,*

*being desirous to maintain and improve the re-
lations of good understanding which happily
subsist between Germany and the Hawaiian
Islands, to promote the development of commerce
and navigation between the two countries and
to define the rights, privileges, immunities
and duties of the respective Consular offi-
cers, have deemed it expedient to conclude a
Treaty of Friendship, Commerce and Navi-
gation and a Consular Convention, and have
for that purpose appointed their respective
Plenipotentiaries, namely:*

*His Majesty the German Emperor, King of
Prussia:*

*His superior Privy Councillor of Government
Dr. Johannes Rösing*

und

and

His Privy Councillor of Legation Hermann
Adolph Heinrich Albrecht von Küsserow

and

His Majesty the King of the Hawaiian Is-
lands:

His Envoy Extraordinary and Minister
Plenipotentiary near His Majesty the
German Emperor Henry A. P.
Carter;

who after having communicated to each other their
respective full powers, found to be in good and due
form, have agreed to and signed the following
articles:

Article I.

There shall be perpetual friendship and peace
between the German Empire and the Kingdom of
the Hawaiian Islands and between the subjects
and citizens of the two countries.

Article II.

The subjects and citizens of the two High
Contracting Parties may remain and re-
side in any part of said territories re-
spectively and shall receive and enjoy
full and perfect protection for their persons
and

and property. They shall have free and easy access to the courts of justice provided by law, in pursuit and defence of their rights, and they shall be at liberty to chose and employ lawyers, advocates or agents, to pursue or defend their rights before such courts of justice; and they shall enjoy in this respect all the rights and privileges as native subjects or citizens.

In whatever relates to rights of residence, to the possession of real estate, goods and effects of any kind, to the succession to real or personal estate, by will or otherwise, and the disposal of property of any sort and in any manner whatsoever, the subjects and citizens of each Contracting Party shall enjoy in the territories of the other the same privileges, liberties and rights, and shall be subject only to the same imposts or charges in these respects as native subjects and citizens.

In regard to marriages concluded by subjects and citizens of the German Empire in the Kingdom of the Hawaiian Islands and by Hawaiian subjects and citizens in the German Empire, the form of marriage shall be regulated by the laws of the country where the marriage is concluded.

The

The subjects or citizens of each of the High Contracting Parties shall enjoy in the dominions of the other entire liberty of conscience and of private or public exercise of their worship, and all the guarantees, rights and protection now ensured, or that may be hereafter ensured to native subjects and citizens, or to the subjects and citizens of any other nation. This liberty and protection shall extend also to the right of burying their respective countrymen according to their religious customs in suitable and convenient places, which they may establish and maintain for that purpose, subject always to the local laws and regulations.

The subjects and citizens of either of the Contracting Parties residing in the territories of the other shall be exempted from all compulsory military service whatsoever, whether by sea or land, and from all forced loans or military exactions or requisitions, and they shall not be compelled under any pretext whatsoever to pay any ordinary charges, requisitions or taxes, other or higher than those that are or may be paid by native subjects or citizens.

They

They shall not be subject to any embargo, nor be detained with their vessels, crews, cargoes or commercial effects, to be used for any military expedition whatever, or for any public or private service whatever, unless the Government or local authority shall have previously agreed with the parties interested on the indemnity to be granted for such service and for such compensation, as may fairly be required for the injury, which (not being purely fortuitous) may grow out of the service, which they have voluntarily undertaken.

Article III.

There shall be between the dominions of the High Contracting Parties a reciprocal freedom of Commerce and Navigation.

The subjects and citizens of the two Contracting Parties shall have liberty to travel in any part of said territories respectively and hire and occupy houses and warehouses; and they may trade, by wholesale or retail, in all kinds of produce, manufactures and merchandise of lawful commerce without being restrained or prejudiced

by

by any monopoly, contract or exclusive privilege of sale or purchase whatever, subject only to the laws, police- and customs-regulations of the country, like native subjects or citizens.

They shall have liberty, freely and securely to come and go with their ships and cargoes to all places, ports and rivers in the territories of the other, which are or may be opened to foreign commerce, and they shall have liberty, there to discharge under the same conditions as natives or the subjects of any other nation, wholly or in part, the cargoes imported by them from abroad, and to lay in and complete, wholly or in part, their return cargoes. This liberty, however, shall not apply to the coasting trade, which the High Contracting Parties reserve to be regulated by the laws of their respective countries, but it is understood, that the subjects and citizens of the High Contracting Parties shall enjoy also in this respect the rights, which are or may be granted, under such laws, to the subjects and citizens of any other country.

No other or higher duties or charges on
account

account of tonnage, light-or harbor- dues, pilotage, quarantine, salvage in case of damage or ship-wreck, or any other local charges, shall be imposed in any of the ports of the two countries respectively than shall be payable by vessels of the country, to whose dominions such ports belong; and for computing such dues upon tonnage the ship's registers shall be taken as indicating the tonnage expressed therein under the system of admeasurement actually adopted by both countries, save any additions or deductions authorized by the admeasurement laws of the respective countries.

It is agreed that German or Hawaiian ships sailing under the flag of their respective country and provided with the papers and documents required by the laws of their respective country shall, for the purposes of this Treaty, be deemed such vessels as their flag and papers show.

In fact, the two High Contracting Parties agree that any favor, privilege or immunity whatever in matters of trade, commerce or navigation, which either Contracting Party has actually granted, or may hereafter grant to subjects and citizens of their own
(without

(without prejudice to the coasting trade before mentioned or to such other trade, as they may by law exclusively reserve to their respective subjects or citizens), or of any other country, shall be extended to the subjects and citizens of the other party under the same conditions and regulations, gratuitously, if such concession shall have been made gratuitously, or (without prejudice to the matter of customs duties treated of in the following articles) in return for a compensation, as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement if such concession shall have been conditional.

Article IV.

No other or higher duties shall be imposed on the importation into the Hawaiian Islands of any article the growth, produce or manufacture of the German Empire, and no other or higher duties shall be imposed on the importation into the German Empire of any article, the growth, produce or manufacture of the Hawaiian Islands, than are or shall be payable on the like article being the growth, produce or manufacture of any foreign country.

No other or higher duties shall be imposed in the territories of either of the Contracting Parties on the exportation of any article to the territories of the other, than such as are or may be levied on the exportation of the like article to any other foreign country.

Article V.

No prohibition shall be imposed upon the importation of any article, the growth, produce or manufacture of the territories of either of the two Contracting Parties into the territories of the other, which shall not equally extend to the importation of the like article being the growth, produce or manufacture of any other country; without prejudice however to the reciprocal right of temporarily prohibiting from sanitary reasons the importation of certain articles from the territories of the other Contracting Party.

Nor shall any prohibition be imposed upon the exportation of any article from the territories of either of the two Contracting Parties to the territories of the other, which shall not equally extend to the exportation of the like article to the territories of all other nations.

Article VI.

The same duties shall be paid on the importation
into

into the dominions of either of the Contracting Parties of any article, which is or may be legally importable therein by native or foreign subjects and citizens, whether such importation shall be in German or in Hawaiian vessels. The same duties shall be paid and the same bounties or drawbacks allowed on the exportation of any article from the dominion of either of the Contracting Parties, which is or may be legally exportable, therefrom by native or foreign subjects and citizens, whether such exportation shall be in German or in Hawaiian vessels.

Merchandise shipped on board German or Hawaiian ships or belonging to their respective subjects and citizens may be transhipped in the ports of the two countries to a vessel bound for a national port of entry or for any foreign port, subject always to the customhouse regulations of the two countries, and the goods so transhipped for foreign ports shall be exempt from all duties of customs or warehouses.

Articles of all sorts proceeding from or shipped for the two countries respectively shall enjoy in their passage through the territories
of

of the High Contracting Parties, whether in direct transit or for reexportation, all the advantages possessed under the same circumstances by any other nation.

Article VII.

The vessels of war, vessels belonging to the State, mail packets and whaling vessels of either of the Contracting Parties shall have free access to all the ports, rivers or places of the other, which are open to foreign commerce and be at liberty to stay therein, to make repairs and refresh their crews and provisions. They shall be subjected to the same charges, rules, laws and regulations, as are or may be imposed on, and shall enjoy in all respects the same rights, privileges or immunities, which are or may be granted to vessels of the same class of any other nation.

Article VIII.

All vessels bearing the flag of Germany or Hawaii shall in times of war receive every possible protection, short of actual hostility, within the ports and waters of
the

the two countries, and each of the High Contracting Parties engages to respect under all circumstances the neutral rights of the flag and the dominions of the other.

Article IX.

For the better security of commerce between the respective subjects it is agreed that if at any time any interruption of friendly intercourse should unfortunately take place between the two Contracting Parties, the subjects of either of the two Contracting Parties shall be allowed a year to close up their accounts and dispose of their property; and a safe conduct shall be given them to embark at the port, which they may themselves select. All subjects of either of the two Contracting Parties, who may be established in the territories of the other in the exercise of any trade or special employment, shall in such case have the privilege of remaining and continuing such trade and employment therein, without any manner of interruption, in full enjoyment of their liberty and property as long as they behave peaceably and commit no offence against the laws, and their goods and effects of whatever description they

they may be, whether in their own custody or intrusted to individuals or to the State, shall not be liable to seizure or sequestration or to any other charge or demand than those, which may be made upon the like effects or property belonging to native subjects. In the same case debts between individuals, public funds and the shares of corporations shall never be confiscated, sequestered, or detained.

Article X.

Each of the Contracting Parties agrees to receive from the other Consuls-General, Consuls, Vice-Consuls and Consular Agents in all its ports, cities and places, except in those, where it may not be convenient to recognize such officers. This reservation, however, shall not apply to one of the Contracting Parties without also applying to every other Power.

Article XI.

The Consuls-General, Consuls, Vice-Consuls or Consular Agents shall be reciprocally received and recognized on the presentation of their commissions in the forms established in their respective countries. The necessary exequatur for the exercise of their functions shall be furnished

to them free of charge, and on the exhibition of this instrument they shall be admitted at once and without difficulty by the territorial authorities, judicial or executive, of the ports, cities and places of their residence and district to the enjoyment of the prerogatives reciprocally granted. The Government that furnishes the exequatur reserves the right to withhold or withdraw the same on a statement of the reasons, for which it has thought proper to do so.

Article XII.

The respective Consuls-General, Consuls, Vice-Consuls or Consular Agents, as well as their Chancellors and Secretaries shall enjoy in the two countries all privileges, exemptions and immunities, which have been granted or in future may be granted to the agents of the same rank of the most favored nation. Consular officers not being citizens of the country where they are accredited shall enjoy in the country of their residence personal immunity from arrest or imprisonment, except in the case of crimes, exemption from military billetings and contributions, from military service of every sort and other public duties, and from all di-

rect

rect or personal or sumptuary taxes, duties or contributions. If, however, the said Consular officers are or become owners of real estate in the country, in which they reside, or engage in commerce, they shall be subject to the same taxes and imposts and to the same jurisdiction as citizens of the country, owners of real estate and merchants. But under no circumstances shall their official income be subject to any tax. Consular officers, who engage in business or commerce, shall not plead their consular privileges to avoid commercial or other liabilities. Consular officers of either character shall not in any event be interfered with in the exercise of their official functions further than is indispensable for the administration of the laws of the country.

Article XIII.

Consuls-General, Consuls, Vice-Consuls and Consular Agents may place over the outer door of their offices or of their dwellings the arms of their nation with the proper inscription indicative of the office. And they may also hoist the flag of their country on the consular edifice, except in places, where a Legation of their country is established. They may also hoist

hoist their flag on board any vessel employed by them in port exclusively for consular purposes.

Article XIV.

The consular archives shall be at all times inviolable, and under no pretence whatever shall the local authorities be allowed to examine or seize the papers forming part of them. When, however, a Consular officer is engaged in other business, the papers relating to the Consulate shall be kept in a separate enclosure, apart from his private papers.

Article XV.

In the event of the death, prevention or absence of Consuls-General, Consuls, Vice-Consuls and Consular Agents, their Chancellors or Secretaries, whose official character may have previously been made known to the respective authorities in Germany or in the Hawaiian Islands, may temporarily exercise their functions, and while thus acting they shall enjoy all the rights, prerogatives and immunities granted by this convention to their incumbents.

Article XVI.

Consuls-General, and Consuls may with the approbation of their respective Governments
appoint

appoint Acting Consuls as their substitutes in case of hinderance or temporary absence and Consular Agents in the cities, ports and places within their consular jurisdiction. Such Acting Consuls or Consular Agents shall be furnished with a commission by the Consul, who appoints them, or by his Government. Any substitute thus appointed shall enjoy consular privileges according to articles XI and XII, while Consular Agents are to be treated as subordinates of the Consul under whose responsibility they act.

Article XVII.

Consuls-General, Consuls, Vice-Consuls and Consular Agents shall have the right to apply to the authorities of the respective countries, judicial or executive, within the extent of their consular district, for the redress of any infraction of the treaties and conventions existing between the two countries, or of international law, to ask information of said authorities and to address the same to the end of protecting the rights and interests of their countrymen, especially in cases of the absence of the latter or of any legal representative of the same, in which cases such Consuls etc. shall
be

be presumed to be their legal representatives. If due notice should not be taken of such application the Consular officers aforesaid, in the absence of a Diplomatic Agent of their country, may apply directly to the Government of the country where they reside.

Article XVIII.

Consuls-General, Consuls, Vice-Consuls or Consular Agents of the two countries or their Chancellors shall have the right conformably to the laws and regulations of their country:

1. To take at their office or dwelling, at the residence of the parties, or on board of vessels of their own nation, the depositions of the captains and crews, of passengers on board, of merchants or any other citizens of their own country;
2. To receive and verify unilateral acts, wills and bequests of their countrymen, and any and all acts of agreement entered upon between citizens of their own country and between such citizens and the citizens or other inhabitants of the country where they reside; and also all contracts between the latter, provided such

such contracts relate to property situated in, or to business to be transacted in the territory of the nation, which said Consular officers represent. But nothing in this article shall interfere with the regulations of the Hawaiian Islands regarding labor contracts.

All such acts of agreement and other instruments and also copies and translations thereof, when duly authenticated by such Consul-General, Consul, Vice-Consul or Consular Agent under his official seal, shall be received by public officials and in courts of justice as legal documents or as authenticated copies, as the case may be, and shall have the same force and effect as if drawn up or authenticated by competent public officers of one or the other of the two countries.

Article XIX.

In case of the death of any citizen of Germany in the Hawaiian Islands or of any citizen of the Hawaiian Islands in the German Empire, without having in the country of his or her decease any known heirs or testamentary executors by him or her appointed, the competent local authorities shall at once inform the nearest
Consular

Consular officer of the nation, to which the deceased belonged, of the circumstances, in order that the necessary information may be immediately forwarded, to parties interested.

The said Consular officer shall have the right to appear personally or by delegate in all proceedings on behalf of the absent heirs or creditors until they are duly represented. He may also, when he deems it expedient, personally administer upon the estate of the deceased for the benefit of his or her lawful heirs and creditors in accordance with the laws of the country, where the death has taken place. To that end he shall apply to the competent court for authority, and in the absence of reasonable objection such authority shall be granted. In all successions to inheritances citizens of each of the Contracting Parties shall pay in the country of the other such duties only as they would be liable to pay if they were citizens of the country, in which the property is situated or the judicial administration of the same may be exercised.

Article IX.

Consuls-General, Consuls, Vice-Consuls
and Consular Agents of the two countries
are

are exclusively charged with the invento-
rying and the safekeeping of goods and
effects of every kind left by sailors on ships
of their nation, who die on board ship or
on land, during the voyage or in the port of
destination, or by passengers while attached
to the ship.

Article XXI.

Consuls-General, Consuls, Vice-Consuls and
Consular Agents shall be at liberty to go either
in person or by proxy on board vessels of their
nation admitted to entry and to examine the
officers and crews, to examine the ship's pa-
pers, to receive declarations concerning their
voyage, their destination and the incidents
of the voyage, also to draw up manifests and
lists of freight, to facilitate the entry and dea-
rance of their vessels and finally to accompany
the said officers or crews before the judicial or
administrative authorities of the country, to
assist them as their interpreters or agents.
In case of the seizure or detention of any vessel
in the ports of either party for violating reve-
nue or other laws, the authorities shall give
due notice to the said Consular officers, in order
that

that they may be present at any proceedings with reference to the same and assist the officers and crew of the ship in courts of law or before any local magistrate. Upon the nonappearance of the said officers or their representative the case may be proceeded with in their absence.

Article XVII.

Consuls-General, Consuls, Vice-Consuls or Consular Agents shall have exclusive charge of the internal order of the merchant vessels of their nation, and shall have the exclusive power to take cognizance of and to determine differences of every kind, which may arise either at sea or in port between the captain, officers and crew, especially also in reference to wages and the execution of mutual contracts. Neither any court or authority shall on any pretext interfere in these differences, except in cases where the differences on board ship are of a nature to disturb the peace and public order in port or on shore, or when persons other than the officers and crew of the vessel are parties to the disturbance or difference. Except as aforesaid the local authorities shall confine themselves to the rendering of efficient aid

aid to the Consuls when they may ask it, in order to arrest and hold all persons, whose names are borne in the ships articles and whom they may deem it necessary to detain. Those persons shall be arrested at the sole request of the Consuls, addressed in writing to the local authorities and supported by an official extract from the register of the ship or the list of the crew, and shall be held during the whole time of the stay of the vessel in the port at the disposal of the Consuls. Their release shall be granted only at the request of the Consuls, made in writing. The expenses of the arrest and detention of those persons shall be paid by the Consuls.

Article XXIII.

Consuls-General, Consuls, Vice-Consuls or Consular Agents may arrest the officers, sailors and all other persons making part of the crews of ships of war or merchant-vessels of their nation, who may be guilty or accused of having deserted said ships and vessels, for the purpose of sending them on board or back to their country. To that end the Consuls of Germany in the Hawaiian Islands shall apply to the authorities

rities, and the Consuls of the Hawaiian Islands in Germany shall apply to any of the competent authorities, and make a request in writing for the deserter, supporting it by an official extract of the register of the vessel and the list of the crew, or by other official documents, to show that the men, whom they claim, belong to said crew. Upon such request alone thus supported and without the exaction of any oath from the Consuls the deserters (not being citizens of the country, where the demand is made either at the time of their shipping or of their arrival in port, or accused of, or under conviction for any crime or offence) shall be given up to the Consuls. All aid and protection shall be furnished them for the pursuit, seizure, and arrest of the deserters, who shall be taken to the prisons of the country and there detained, at the request and the expense of the Consuls until the said Consuls may find an opportunity of sending them away.

If, however, such opportunity should not present itself within the space of six months, counting from the day of the arrest, the deserters shall be set at liberty and shall not again be arrested for the same cause.

Article XXIV.

In the absence of an agreement to the contrary between the owners, freighters and insurers all damages suffered at sea by the vessels of the two countries, whether they enter port voluntarily or by stress of weather, shall be settled by the Consul-General, Consuls, Vice-Consuls and Consular Agents of the respective countries. If, however, the said Consul-General, Consul, Vice-Consul or Consular Agent is interested in or agent for said vessel or cargo, or if any inhabitant of the country or citizen or subject of a third power shall be interested in the matter, and the parties cannot agree, the local authorities shall decide.

Article XXV.

In the event of a vessel belonging to the Government or owned by a citizen of one of the two Contracting Parties being wrecked, or cast on shore on the coast of the other, the local authorities shall inform the Consul-General, Consul, Vice-Consul or Consular Agent of the district of the occurrence, or if there be no such Consular Agency, they shall inform the Consul-General, Consul, Vice-Consul or Consular Agent of the nearest district. All proceedings relative to
the

the salvage of Hawaiian vessels wrecked or cast on shore in the territorial waters of the German Empire shall take place in accordance with the laws of Germany; and reciprocally all measures of salvage relative to German vessels wrecked or cast on shore in the territorial waters of the Hawaiian Islands shall take place in accordance with the laws of the Hawaiian Islands. The Consular authorities have in both countries to intervene only to superintend the proceedings having reference to the repair and re-equipment, or if necessary to the sale of the vessel wrecked or cast on shore and then only in the absence of parties interested, their factors or agents. For the intervention of the local authorities no charges shall be made, except such as in similar cases are paid by the vessels of the nation.

In case of doubt concerning the nationality of a shipwrecked vessel the local authorities shall have exclusively the direction of the proceedings provided for in this article. All merchandise and goods not destined for consumption in the country where the wreck takes place shall be free of all duties, but subject to regulations of bonded goods.

Article LXVI.

Article XXVI.

The present Treaty shall come in force immediately after the exchange of the ratifications. In order that the two Contracting Parties may have the opportunity of hereafter treating and agreeing upon such modifications or other arrangements as may tend to the improvement of their mutual intercourse or to the advancement of the interests of their respective subjects it is agreed that at any time after the 31st day of July 1882 either of the Contracting Parties may give to the other party notice of its intention to terminate articles II, I and III. of the present Treaty, or to terminate the Treaty as a whole, and that at the expiration of twelve months after the date of such notice, the said articles (if such notice shall have reference only to said articles) or the present Treaty (if such notice shall have been to that effect) and all the stipulations contained therein shall cease to be binding on the two Contracting Parties.

Article XXVII.

The present Treaty shall extend also to the Grand Duchy of Luxemburg, as long as the same belongs to the German Customs Union.

Article XXVIII.

Article XXVIII.

The present Treaty shall be ratified and the ratifications exchanged at Berlin before the 31st day of July 1880 or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the same and affixed thereto their respective seals.

Done at Berlin the twenty fifth day of March and at Honolulu, the nineteenth day of September in the year of our Lord one thousand eight hundred and seventy nine.

(L. S.) Johannes Rösing, Dr.

(L. S.) H. von Küsserow.

(L. S.) Henry A. P. Carter.

Separate Article.

Certain relations of proximity and other considerations having rendered it important to the Hawaiian Government to enter into mutual arrangements with the Government of the United States of America by a convention concluded at Washington, the 30th day of January 1875,

the two High Contracting Parties have agreed, that the special advantages granted by said convention to the United States of America, in consideration of equivalent advantages, shall not in
any

any case be invoked in favor of the relations sanctioned between the two High Contracting Parties by the present Treaty.

The present separate article shall have the same force and value, as if it were inserted, word for word, in the Treaty signed this day, and shall be ratified at the same time.

In witness whereof the respective Plenipotentiaries have signed the same and affixed thereto their respective seals.

Done at Berlin the twenty fifth day of March and at Honolulu the nineteenth day of September in the year of our Lord one thousand eight hundred and seventy nine.

(L. S.) Johannes Rösing Dr.

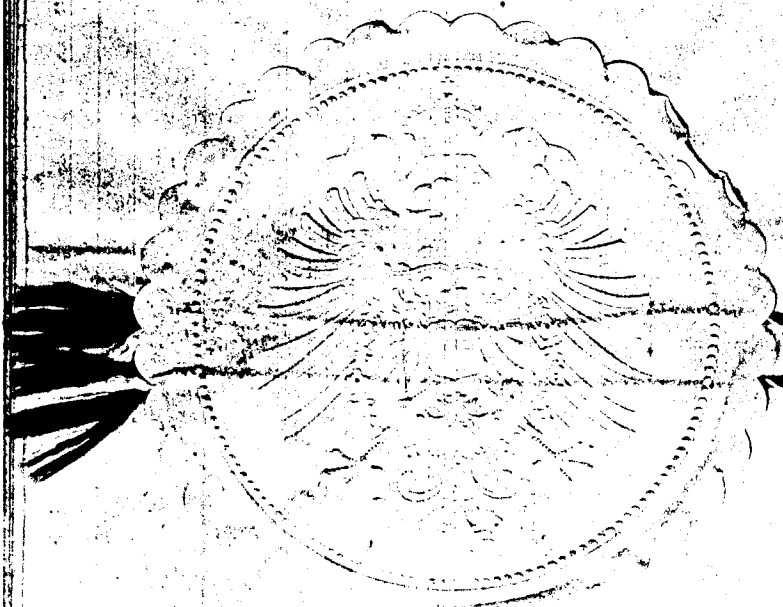
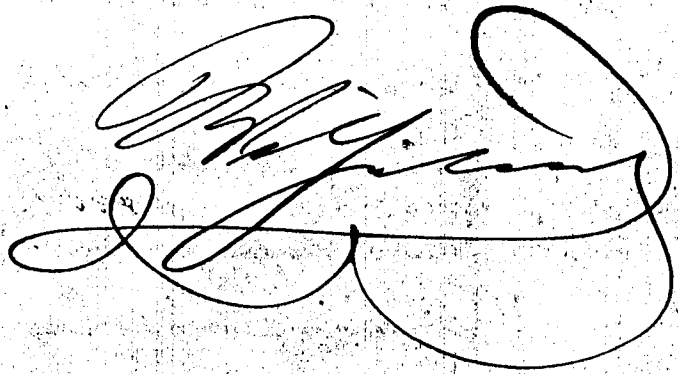
(L. S.) H. von Kusselov.

(L. S.) Henry A. S. Carter.

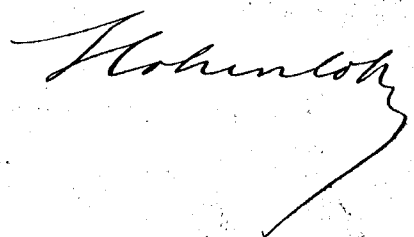
Kunz

Kennntniß genommen und die getroffenen Ab-
reden in allen Punkten Unseren Willen gemäß
befunden haben, so genehmigen und ratifizieren
Wir den gedachten Vertrag zwischen uns dem Herz-
ogtum, denselben zu erfüllen und von Unseren
Beförden unterstützen zu lassen.

Zu Akt und Tassen haben Wir die gegenwärtige
Ratifikations-Akte eigenhändig vollzogen und
mit Unserem Königlichem Insigne versehen lassen.
Gegeben Wien den 25. April 1880.



Ratifikations-Akte.



Declaration.

Erklärung.

The undersigned Plenipoten-
tiaries, negotiators of the fore-
going Treaty of Friendship,
Commerce and Navigation
and Consular Convention
between the German Empire
and the Hawaiian Kingdom,
have met to-day and agreed,
with the consent of their re-
spective Governments to the
following explanatory notes
regarding some dispositions
of said Treaty:

Von untenzeichneten Bevoll-
mächtigten, welche den vorstehenden
Freundschafts-, Handels-, Schiffahrt-,
Konsular-Vertrag zwischen
dem Deutschen Reich und dem
Königreich Hawaii unterzeichnet
haben, sind heute zusammenge-
treten und haben sich unter Zu-
stimmung ihrer respektiven
Regierungen über die nachstehen-
den Erläuterungen zu einzel-
nen Bestimmungen des Ver-
trages geeinigt:

First. The third section of
Article II of said Treaty, in
regard to marriages, is in-
tended to mean, that mar-
riages concluded by citizens
of the one country in the
other in the forms sanctioned
by the laws of the latter shall

Erstes. Der dritte Absatz des
Artikel II des genannten Vertrags
in Betreff von Eheschließungen
ist so zu verstehen, daß die von
Angehörigen des einen Lan-
des in dem andern in den
dortigen Gesetzen des letzteren
vorgeschriebenen Formen ab-

be

zu

be considered and held legal and valid likewise in the former country, provided that, in regard to the conditions of matrimony, no disposition, applicable to such case according to the law of the native country, is violated or contravened by such marriage.

Second. The clause of Article XIII in regard to the reciprocal exemption of consular officers, not being citizens of the country where they are accredited, "from all direct or personal or summary taxes, duties, or contributions" is not intended in any case to include Customs - Duties.

Third. The clause in the same Article XIII "If how- ever the said consular offi- cers

gesetzlichem Sinne auch in dem
aufstehen Lande als zu Recht
bestanden anerkannt werden und
gulten sollen, vorausgesetzt, dass
in Aufhebung der materiellen Ver-
fassung der Ehegesetze,
keine Verletzung der heimischen
Gesetze oder Eingriffe ist.
Die Bestimmung
in Artikel XIII, in Betreff der
gegenseitigen Befreiung der
Konsularbeamten, welche nicht
Angehörige des Landes sind, wo
sie ihren Sitz haben, von allen
direkten oder persönlichen oder
summarischen Steuern, Abgaben, Leistungen und
Beiträgen", soll in keinem
Falle Zollabgaben umfassen.
Die Bestimmung
in demselben Artikel XIII
"Wenn aber die genannten Kon-
sular-
sü."

cers are, or become, owners of *fielarbuanntun in dem Lande,*
 real estate in the country *wo sie ihren Aufenthalt haben,*
 where they reside, or engage *(Gründung und Betrieb)* *seiner oder ihrer,*
in commerce "is intended *den oder ihren gewerblichen Betrieb,*
 and shall be construed to *ist dahin zu verstehen und auszulegen,*
 mean the engaging of any *yon, und damit den* *Leitenden*
 consular officer in any *bei* *irgendeinem anderen als dem Konsul,*
 business or pursuit for profit *bestimmten Funktionen zu betreiben,*
 extraneous to his consular *sonstigen betriebl. Funktionen*
 functions. *Gründe bringenden Geschäfts der*
gewerblichen ihrer einen Konsular-
beamtun gemeint ist.

Done at Berlin, *(Zugeschrieben zu Berlin,*
 February 10th 1880. *den 10^{ten} Februar 1880.)*

Henry A. P. Carter

Johannes Böding
Merceron

Henry A. P. Carter

Johannes Böding
Merceron

Protocol.

Protokoll.

The Undersigned have met die Unterzeichneten sind
this day in order to effect heute zusammengetreten,
the exchange of the Ratifica- um den Austausch der
tions of the Treaty of Friendship, Ratifikationen des zu
Commerce and Navigation Berlin am 25. März und
and Consular Convention zu Honolulu am 19. September
signed at Berlin on the 1879 unterzeichneten Traktats.
25th day of March and at 1879, am 19. September
Honolulu on the 19th day of und Konsular, Vertrag
September 1879 between the zwischen dem Deutschen
German Empire and the Kaiser und dem Königreich
Kingdom of the Hawaiian der Hawaiian Inseln zu
Islands. bewirkt.

Before proceeding to this Lassen zu diesem Akt ge-
Act, the Undersigned, to wit 1. Mit dem
the Imperial Ambassador Unterzeichneten, nämlich
Prince Chlodwig von der mit der Leitung
Hohenlohe-Schillingsfürst, des Oberwärtigen Rats
invested with the direction des Deutschen Reichs be-
of the affairs of the Foreign auftragte Kaiserliche Legat.
Office 1. Grafen

Office of the German Empire
and

the Envoy extraordinary and
and Minister plenipotentiary
of the Kingdom of the
Hawaiian Islands, Henry
A. P. Carter,

pfaffter Fürst Chlodwig von
Hohenlohe-Schillingsfürst

der außerordentliche Gesandte
und bevollmächtigte Minister
des Königs der Hawaiianen
zu Honolulu, Henry A. P. Carter,

declared that the Ratifications der die Ratifikationen Ihrer
of Their Majesties the German Majestäten des deutschen Kaisers,
Emperor, King of Prussia, Königs von Preußen, und
and the King of the Hawaiian des Königs der Hawaiianen zu
Islands are to be considered sein als auch auf die dem von
as extending also to the de- trage angefangene Erklärung
claration which, having been seit aufgenommen anzufassen sind,
signed at Berlin on the 10th day welche zu Berlin am 10. Februar
of February of this year für dieses Jahres zum Erläuterung
the purpose of explaining einiger Bestimmungen des
some dispositions of the Vertrag in Gemäßheit der
Treaty according to the de- Wünsche der Hawaiianen Regie-
sire of the Hawaiian Govern- rung unterzeichnet und zugleich
ment, have been approved mit dem Vertrag verbunden
together with the Treaty by folgende Faktoren des
the deutschen

the legislative Powers of the German Empire.

Imperial Government
approved.

With this agreement and with its ratification
formally accepted on behalf of the two Governments the
undersigned proceeded to the exchange of Ratifications,
the exchange of Ratifications, 17. April 1880 and
found to be in good and due form, and executed in dupli-
cate the present protocol.

Berlin, April 26th 1880. Berlin, den 26. April 1880.

Henry A. P. Carter

Hohenlohe

(25) TREATY OF FRIENDSHIP, COMMERCE
AND NAVIGATION AND CONSULAR CONVENTION,

BETWEEN THE GERMAN EMPIRE AND THE KINGDOM
OF THE HAWAIIAN ISLANDS.

His Majesty the German Emperor, King of Prussia, in the name of the German Empire on the one part, and His Majesty the King of the Hawaiian Islands on the other part, being desirous to maintain and improve the relations of good understanding which happily subsist between Germany and the Hawaiian Islands, to promote the development of commerce and navigation between the two countries and to define the rights, privileges, immunities and duties of the respective Consular officers, have deemed it expedient to conclude a Treaty of Friendship, Commerce and Navigation and a Consular Convention, and have for that purpose appointed their respective Plenipotentiaries, namely:

His Majesty the German Emperor, King of Prussia: His Superior Privy Councillor of Government Dr. Johannes Rosing and His Privy Councillor of Legation, Hermann Adolph Heinrich Albrecht von Kusserow and His Majesty the King of the Hawaiian Islands: His Envoy Extraordinary and Minister Plenipotentiary near His Majesty the German Emperor Henry A. P. Carter; who after having communicated to each other their respective full powers, found to be in good and due form, have agreed to and signed the following articles:

ARTICLE I. There shall be perpetual friendship and peace between the German Empire and the Kingdom of the Hawaiian Islands and between the subjects and citizens of the two countries.

ARTICLE II. The subjects and citizens of the two High Contracting Parties may remain and reside in any part of said territories respectively and shall receive and enjoy full and perfect protection for their persons and property. They shall have free and easy access to the courts of justice, provided by law, in pursuit and defence of their rights, and they shall be at liberty to choose and employ lawyers, advocates or agents to pursue or defend their rights before such courts of justice; and they shall enjoy in this respect all the rights and privileges as native subjects or citizens.

In whatever relates to rights of residence, to the possession of real estate, goods and effects of any kind, to the suc-

cession to real or personal estate, by will or otherwise, and the disposal of property of any sort and in any manner whatsoever, the subjects and citizens of each Contracting Party shall enjoy the territories of the other the same privileges, liberties and rights and shall be subject only to the same imposts or charges in these respects as native subjects and citizens.

In regard to marriages concluded by subjects and citizens of the German Empire in the Kingdom of the Hawaiian Islands and by Hawaiian subjects and citizens in the German Empire, the form of marriage shall be regulated by the laws of the country where the marriage is concluded.

The subjects or citizens of each of the High Contracting Parties shall enjoy in the dominions of the other entire liberty of conscience and of private or public exercise of their worship and all the guarantees, rights and protection now ensured, or that may be hereafter ensured to native subjects and citizens, or to the subjects and citizens of any other nation. This liberty and protection shall extend also to the right of burying their respective countrymen according to their religious customs in suitable and convenient places, which they may establish and maintain for that purpose, subject always to the local laws and regulations.

The subjects and citizens of either of the Contracting Parties residing in the territories of the other shall be exempted from all compulsory military service whatsoever, whether by sea or land, and from all forced loans or military exactions or requisitions, and they shall not be compelled under any pretext whatsoever to pay any ordinary charges, requisitions or taxes, other or higher than those that are or may be paid by native subjects or citizens.

They shall not be subject to any embargo, nor be detained with their vessels, crews, cargoes or commercial effects, to be used for any military expedition whatever, or for any public or private service whatever, unless the Government or local authority shall have previously agreed with the parties interested on the indemnity to be granted for such service and for such compensation, as may fairly be required for the injury, which (not being purely fortuitous) may grow out of the service, which they have voluntarily undertaken.

ARTICLE III. There shall be between the dominions of the High Contracting Parties a reciprocal freedom of Commerce and Navigation.

The subjects and citizens of the two Contracting Parties

shall have liberty to travel in any part of said territories respectively and hire and occupy houses and warehouses; and they may trade, by wholesale or retail, in all kinds of produce, manufactures and merchandise of lawful commerce without being restrained or prejudiced by any monopoly, contract or exclusive privilege of sale or purchase whatever, subject only to the laws, police and customs regulations of the country, like native subjects or citizens.

They shall have liberty, freely and securely, to come and go with their ships and cargoes to all places, ports and rivers in the territories of the other, which are or may be opened to foreign commerce, and they shall have liberty, there to discharge under the same conditions as natives or the subjects of any other nation, wholly or in part, the cargoes imported by them from abroad, and to lay in and complete, wholly or in part, their return cargoes. This liberty, however, shall not apply to the coasting trade, which the High Contracting Parties reserve to be regulated by the laws of their respective countries; but it is understood, that the subjects and citizens of the High Contracting Parties shall enjoy also in this respect the rights, which are or may be granted, under such laws, to the subjects and citizens of any other country.

No other or higher duties or charges on account of tonnage, light or harbor dues, pilotage, quarantine, salvage in case of damage or ship wreck, or any other local charges, shall be imposed in any of the ports of the two countries respectively than shall be payable by vessels of the country, to whose dominions such ports belong; and for competing such dues upon tonnage the ships' registers shall be taken as indicating the tonnage expressed therein under the system of admeasurement actually adopted by both countries, save any additions or deductions authorized by the admeasurement laws of the respective countries.

It is agreed that German or Hawaiian ships sailing under the flag of their respective country and provided with the papers and documents required by the laws of their respective country shall, for the purposes of this Treaty, be deemed such vessels as their flag and papers show.

In fact, the two High Contracting Parties agree that any favor, privilege or immunity whatever in matters of trade, commerce or navigation, which either Contracting Party has actually granted, or may hereafter grant to subjects and citizens of their own (without prejudice to the coasting

trade before mentioned or to such other trade, as they may by law exclusively reserve to their respective subjects or citizens), or of any other country, shall be extended to the subjects and citizens of the other party under the conditions and regulations, gratuitously, if such concession shall have been made gratuitously, or (without prejudice to the matter of customs duties treated of in the following articles) in return for a compensation as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement if such concession shall have been conditional.

ARTICLE IV. No other or higher duties shall be imposed on the importation into the Hawaiian Islands of any article the growth, produce or manufacture of the German Empire, and no other or higher duties shall be imposed on the importation into the German Empire of any article, the growth, produce or manufacture of the Hawaiian Islands, than are or shall be payable on the like article being the growth, produce or manufacture of any foreign country.

ARTICLE V. No prohibition shall be imposed upon the importation of any article, the growth, produce or manufacture of the territories of either of the two Contracting Parties into the territories of the other, which shall not equally extend to the importation of the like article being the growth, produce or manufacture of any other country; without prejudice however to the reciprocal right of temporarily prohibiting from sanitary reasons the importation of certain articles from the territories of the other Contracting Party.

Nor shall any prohibition be imposed upon the exportation of any article from the territories of either of the two Contracting Parties to the territories of the other, which shall not equally extend to the exportation of the like article to the territories of all other nations.

ARTICLE VI. The same duties shall be paid on the importation into the dominions of either of the Contracting Parties of any article, which is, or may be legally imported therein by native or foreign subjects and citizens, whether such importation shall be in German or in Hawaiian vessels. The same duties shall be paid and the same bounties or drawbacks allowed on the exportation of any article from the dominion of either of the Contracting Parties, which is or may be legally exportable therefrom by native or foreign subjects and citizens, whether such exportation shall be in German or in Hawaiian vessels.

Merchandise shipped on board German or Hawaiian ships or belonging to their respective subjects or citizens may be transhipped in the ports of the two countries to a vessel bound to a national port of entry or for any foreign port, subject always to the custom-house regulations of the two countries, and the goods so transhipped for foreign ports shall be exempt from all duties of customs or warehouses.

Articles of all sorts proceeding from or shipped for the two countries respectively shall enjoy in their passage through the territories of the High Contracting Parties, whether in direct transit or for re-exportation, all the advantages possessed under the same circumstances by any other nation.

ARTICLE VII. The vessels of war, vessels belonging to the State, mail packets and whaling vessels of either of the Contracting Parties shall have free access to all ports, rivers or places of the other, which are open to foreign commerce, and be at liberty to stay therein, to make repairs and refresh their crews and provisions. They shall be subjected to the same charges, rules, laws and regulations, as are or may be imposed on, and shall enjoy in all respects the same rights, privileges or immunities, which are or may be granted to vessels of the same class of any other nation.

ARTICLE VIII. All vessels bearing the flag of Germany or Hawaii shall in times of war receive every possible protection, short of actual hostility, within the ports and waters of the two countries, and each of the High Contracting Parties engages to respect under all circumstances the neutral rights of the flag and the dominions of the other.

ARTICLE IX. For the better security of commerce between the respective subjects it is agreed that if at any time any interruption of friendly intercourse should unfortunately take place between the two Contracting Parties, the subjects of either of the two Contracting Parties shall be allowed a year to close up their accounts and dispose of their property; and a safe conduct shall be given them to embark at the port, which they may themselves select. All subjects of either of the two Contracting Parties, who may be established in the territories of the other in the exercise of any trade or special employment, shall in such case have the privilege of remaining and continuing such trade and employment therein, without any manner of interruption, in full enjoyment of their liberty and property as long as they behave peaceably and commit no offence against the laws,

and their goods and effects of whatever description they may be, whether in their own custody or intrusted to individuals or to the State, shall not be liable to seizure or sequestration or to any other charge or demand than those, which may be made upon the like effects or property belonging to native subjects. In the same case debts between individuals, public funds and the shares of corporations shall never be confiscated, sequestered or detained.

ARTICLE X. Each of the Contracting Parties agrees to receive from the other Consuls-General, Consuls, Vice-Consuls and Consular Agents in all its ports, cities and places, except in those, where it may not be convenient to recognize such officers. This reservation, however, shall not apply to one of the contracting parties, without also applying to every other Power.

ARTICLE XI. The Consuls-General, Consuls, Vice-Consuls or Consular Agents shall be reciprocally received and recognized on the presentation of their commissions in the forms established in their respective countries. The necessary exequatur for the exercise of their functions shall be furnished to them free of charge, and on the exhibition of this instrument they shall be admitted at once and without difficulty by the territorial authorities, judicial or executive, of the ports, cities and places of their residence and district to the enjoyment of the prerogatives reciprocally granted. The Government that furnishes the exequatur reserves the right to withhold or withdraw the same on a statement of the reasons, for which it has thought proper to do so.

ARTICLE XII. The respective Consuls-General, Consuls, Vice-Consuls or Consular Agent, as well as their Chancellors and Secretaries shall enjoy in the two countries all privileges, exemptions and immunities, which have been granted or in future may be granted to the agents of the same rank of the most favored nation. Consular officers not being citizens of the country where they are accredited shall enjoy in the country of their residence personal immunity from arrest or imprisonment, except in the case of crimes, exemption from military billetings and contributions, from military service of every sort and other public duties, and from all direct or personal or sumptuary taxes, duties or contributions. If, however, the said Consular officers are or become owners of real estate in the country, in which they reside, or engage in commerce, they shall be subject to the same taxes and imposts and to the same jurisdiction as citizens of the country, owners of real estate and merchants. But under no

circumstances shall their official income be subject to any tax. Consular officers, who engage in business or commerce, shall not plead their consular privileges to avoid commercial or other liabilities. Consular officers of either character shall not in any event be interfered with in the exercise of their official functions further than is indispensable for the administration of the laws of the country.

ARTICLE XIII. Consuls-General, Consuls, Vice-Consuls and Consular Agents may place over the outer door of their offices or of their dwellings the arms of their nation with the proper inscription indicative of the office. And they may also hoist the flag of their country on the Consular edifice, except in places, where a Legation of their country is established. They may also hoist their flag on board any vessel employed by them in port exclusively for Consular purposes.

ARTICLE XIV. The Consular archives shall be at all times inviolable, and under no pretence whatever shall the local authorities be allowed to examine or seize the papers forming part of them. When, however, a Consular officer is engaged in other business, the papers relating to the Consulate shall be kept in a separate enclosure, apart from his private papers.

ARTICLE XV. In the event of the death, prevention or absence of Consuls-General, Consuls, Vice-Consuls and Consular Agents, their Chancellors or Secretaries, whose official character may have previously been made known to the respective authorities in Germany or in the Hawaiian Islands, may temporarily exercise their functions, and while thus acting they shall enjoy all the rights, prerogatives and immunities granted by this convention to their incumbents.

ARTICLE XVI. Consuls-General and Consuls may with the approbation of their respective Governments appoint Acting Consuls as their substitutes in case of hinderance or temporary absence, and Consular Agents in the cities, ports and places within their jurisdiction. Such Acting Consuls or Consular Agents shall be furnished with a commission by the Consul, who appoints them, or by his Government. Any substitute thus appointed shall enjoy consular privileges according to Articles XI and XII, while Consular Agents are to be treated as subordinates of the Consul under whose responsibility they act.

ARTICLE XVII. Consuls-General, Consuls, Vice-Consuls and Consular Agents shall have the right to apply to the authorities of the respective countries, judicial or executive,

within the extent of their consular district, for the redress of any infraction of the treaties and conventions existing between the two countries, or of international law; to ask information of said authorities and to address the same to the end of protecting the rights and interests of their countrymen, especially in cases of the absence of the latter or of any legal representative of the same, in which cases such Consuls, etc., shall be presumed to be their legal representatives. If due notice should not be taken of such application the Consular officers aforesaid, in the absence of a Diplomatic Agent of their country, may apply directly to the Government of the country where they reside.

ARTICLE XVIII. Consuls-General, Consuls, Vice-Consuls and Consular Agents of the two countries or their Chancellors, shall have the right conformably to the laws and regulations of the country:

1. To take at their office or dwelling, at the residence of the parties, or on board of vessels of their own nation, the depositions of the captains and crews, of passengers on board, of merchants or any other citizens of their country;

2. To receive and verify unilateral acts, wills and bequests of their countrymen, and any and all acts of agreement entered upon between citizens of their own country, and between such citizens and the citizens or other inhabitants of the country where they reside; and also all contracts between the latter, provided such contracts relate to property situated in, or to business to be transacted in the territory of the nation, which said Consular officers represent. But nothing in this article shall interfere with the regulations of the Hawaiian Islands regarding labor contracts.

All such acts of agreement and other instruments and also copies and translations thereof, when duly authenticated by such Consul-General, Consul, Vice-Consul or Consular Agent under his official seal, shall be received by the public officials and in courts of justice as legal documents or as authenticated copies, as the case may be, and shall have the same force and effect as if drawn up or authenticated by competent officers of one or the other of the two countries.

ARTICLE XIX. In case of the death of any citizen of Germany in the Hawaiian Islands or of any citizen of the Hawaiian Islands in the German Empire, without having in the country of his or her decease any known heirs or testamentary executors by him or her appointed, the competent local authorities shall at once inform the nearest Consular

officer of the nation, to which the deceased belonged, of the circumstances, in order that the necessary information may be immediately forwarded to parties interested.

The said Consular officer shall have the right to appear personally or by delegate in all proceedings on behalf of the absent heirs or creditors until they are duly represented. He may also, when he deems it expedient, personally administer upon the estate of the deceased for the benefit of his or her lawful heirs and creditors in accordance with the laws of the country, where the death has taken place. To that end he shall apply to the competent court for authority, and in the absence of reasonable objection such authority shall be granted. In all successions to inheritances citizens of each of the Contracting Parties shall pay in the country of the other such duties only as they would be liable to pay if they were citizens of the country, in which the property is situated, or the judicial administration of the same may be exercised.

ARTICLE XX. Consuls-General, Consuls, Vice-Consuls and Consular Agents of the two countries are exclusively charged with the inventorying and the safe-keeping of goods and effects of every kind left by the sailors on ships of their nation, who died on board ship or on land, during the voyage, or in the port of destination, or by passengers while attached to the ship.

ARTICLE XXI. Consuls-General, Consuls, Vice-Consuls and Consular Agents shall be at liberty to go either in person or by proxy on board vessels of their nation, admitted to entry, and to examine the officers and crews, to examine the ships' papers, to receive declarations concerning their voyage, their destination and the incidents of the voyage, also to draw up manifests and lists of freight, to facilitate the entry and clearance of their vessels, and finally to accompany the said officers or crews before the judicial or administrative authorities of the country, to assist them as their interpreters or agents. In case of the seizure or detention of any vessel in the ports of either party for violating revenue or other laws, the authorities shall give due notice to the said Consular officers, in order that they may be present at any proceedings with reference to the same, and assist the officers and crew of the ship in courts of law or before any local magistrate. Upon the non-appearance of the said officers or their representative, the case may be proceeded with in their absence.

ARTICLE XXII. Consuls-General, Consuls, Vice-Consuls or Consular Agents shall have exclusive charge of the internal order of the merchant vessels of their nation, and shall have the exclusive power to take cognizance of and to determine differences of every kind, which may arise either at sea or in port between the captain, officers and crew, especially also in reference to wages and the execution of mutual contracts. Neither any court or authority shall on any pretext interfere in these differences, except in cases where the differences on board ship are of a nature to disturb the peace and public order in port or on shore, or when persons other than the officers and crew of the vessel are parties to the disturbance or difference. Except as aforesaid the local authorities shall confine themselves to the rendering of efficient aid to the Consuls when they may ask it, in order to arrest and hold all persons, whose names are borne in the ships' articles and whom they may deem it necessary to detain. Those persons shall be arrested at the sole request of the Consuls, addressed in writing to the local authorities and supported by an official extract from the register of the ship or the list of the crew, and shall be held during the whole time of the stay of the vessel in the port at the disposal of the Consuls. Their release shall be granted only at the request of the Consuls, made in writing. The expenses of the arrest and detention of those persons shall be paid by the Consuls.

ARTICLE XXIII. Consuls-General, Consuls, Vice-Consuls or Consular Agents may arrest the officers, sailors and all other persons making part of the crews of ships of war or merchant-vessels of their nation, who may be guilty or accused of having deserted said ships and vessels, for the purpose of sending them on board or back to their country. To that end the Consuls of Germany in the Hawaiian Islands shall apply to the authorities, and the Consuls of the Hawaiian Islands in Germany shall apply to any of the competent authorities, and make a request in writing to the deserter, supporting it by an official extract of the register of the vessel and the list of the crew, or by other official documents, to show that the men, whom they claim, belong to said crew. Upon such request alone thus supported and without the exaction of any oath from the Consuls the deserters (not being citizens of the country, where the demand is made either at the time of their shipping or of their arrival in port, or accused of, or under conviction for any crime or offence) shall be given up to the Consuls. All aid and pro-

tection shall be furnished them for the pursuit, seizure and arrest of the deserters, who shall be taken to the prisons of the country and there detained at the request and the expense of the Consuls until the said Consuls may find an opportunity of sending them away.

If, however, such opportunity should not present itself within the space of six months, counting from the day of the arrest, the deserters shall be set at liberty and shall not again be arrested for the same cause.

ARTICLE XXIV. In the absence of an agreement to the contrary between the owners, freighters and insurers all damages suffered at sea by the vessels of the two countries, whether they enter port voluntarily or by stress of weather, shall be settled by the Consul-General, Consuls, Vice-Consuls and Consular Agents of the respective countries. If, however, the said Consul-General, Consul, Vice-Consul or Consular Agent is interested in or agent for said vessel or cargo, or if any inhabitant of the country or citizen or subject of a third power shall be interested in the matter, and the parties cannot agree, the local authorities shall decide.

ARTICLE XXV. In the event of a vessel belonging to the Government or owned by a citizen of one of the two Contracting Parties being wrecked or cast on shore on the coast of the other, the local authorities shall inform the Consul-General, Consul, Vice-Consul or Consular Agent of the district of the occurrence, or if there be no such Consular Agency they shall inform the Consul-General, Consul, Vice-Consul or Consular Agent of the nearest district. All proceedings relative to the salvage of Hawaiian vessels wrecked or cast on shore in the territorial waters of the German Empire, shall take place in accordance with the laws of Germany; and, reciprocally, all measures of salvages, relative to German vessels wrecked or cast on shore in the territorial waters of the Hawaiian Islands, shall take place in accordance with the laws of the Hawaiian Islands. The Consular authorities have, in both countries, to intervene only to superintend the proceedings having reference to the repair and reequipping, or, if necessary, to the sale of the vessel wrecked or cast on shore, and then only in the absence of parties interested, their factors or agents. For the intervention of the local authorities no charges shall be made, except such as in similar cases are paid by the vessels of the nation.

In case of doubt concerning the nationality of a shipwrecked vessel, the local authorities shall have exclusively

the direction of the proceedings provided for in this article. All merchandise and goods not destined for consumption in the country where the wreck takes place, shall be free of all duties, but subject to regulations of bonded goods.

ARTICLE XXVI. The present Treaty shall come in force immediately after the exchange of the ratifications. In order that the two Contracting Parties may have an opportunity of hereafter treating and agreeing upon such modifications or other arrangements as may tend to the improvement of their mutual intercourse or to the advancement of the interests of their respective subjects, it is agreed that at any time after the 31st day of July, 1882, either of the Contracting Parties may give to the other notice of its intention to terminate Articles IV, V and VI of the present Treaty or to terminate the Treaty as a whole, and that at the expiration of twelve months after the date of such notice, the said articles (if such notice shall have reference only to said articles) or the present Treaty (if such notice shall have been to that effect) and all the stipulations contained therein shall cease to be binding on the two Contracting Parties.

ARTICLE XXVII. The present Treaty shall extend also to the Grand Duchy of Luxemburg as long as the same belongs to the German Customs Union.

ARTICLE XXVIII. The present Treaty shall be ratified and the ratifications exchanged at Berlin before the 31st day of July, 1880, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the same and affixed thereto their respective seals.

Done at Berlin the twenty-fifth day of March, and at Honolulu the nineteenth day of September, in the year of Our Lord one thousand eight hundred and seventy-nine.

[L. s.]

[L. s.]

[L. s.]

JOHANNES ROSING, DR.,

H. v. KUSSEROW,

HENRY A. P. CARTER.

SEPARATE ARTICLE. Certain relations of proximity and other considerations having rendered it important to the Hawaiian Government to enter into mutual arrangements with the Government of the United States of America by a convention concluded at Washington, the 30th day of January, 1875.

The two High Contracting Parties have agreed, that the special advantages granted by said convention to the United States of America, in consideration of equivalent advantages,

shall not in any case be invoked in favor of the relations sanctioned between the two High Contracting Parties by the present Treaty.

The present separate article shall have the same force and value, as if it were inserted, word for word, in the Treaty signed this day, and shall be ratified at the same time.

In witness whereof, the respective Plenipotentiaries have signed the same and affixed thereto their respective seals.

Done at Berlin the twenty-fifth day of March, and at Honolulu the nineteenth day of September, in the year of Our Lord one thousand eight hundred and seventy-nine.

[L. S.]
[L. S.]
[L. S.]

JOHANNES ROSING, DR.,
H. v. KUSSEROW,
H. A. P. CARTER.

AND WHEREAS, the said Treaty has been now duly ratified by His Majesty the King and His Imperial Majesty of the German Empire, and ratifications exchanged, the said Treaty has become a part of the law of this Kingdom, and all the provisions thereof are to be observed.

[L. S.]

JOHN MAKINI KAPENA
Minister of Foreign Affairs.

DECLARATION.—The undersigned, Plenipotentiaries, negotiators of the foregoing Treaty of Friendship, Commerce and Navigation and Consular Convention, between the German Empire and the Hawaiian Kingdom, have met to-day and agreed, with the consent of their respective Governments, to the following explanatory notes regarding some dispositions of said Treaty:

First—The third section of Article II, of said Treaty, in regard to marriages, concluded by citizens of the one country in the other, in the forms sanctioned by the laws of the latter, shall be considered and held legal and valid likewise in the former country; provided, that in regard to the material conditions of matrimony, no disposition applicable to such case, according to the law of the native country, is violated or contravened by such marriage.

Second—The clause of Article XII, in regard to the reciprocal exemption of Consular officers, not being citizens of the country where they are accredited, "from all direct or personal or sumptuary taxes, duties or contributions," is not intended in any case to include customs duties.

Third—The clause in the same Article XII, "if, however,

the said Consular officers are, or become owners of real estate in the country where they reside, or engage in commerce," is intended and shall be construed to mean the engaging of any Consular officer in any business or pursuit for profit extraneous to his consular functions.

Done at Berlin, February 10th, 1880.

HENRY A. P. CARTER,
JOHANNES ROSING,
H. v. KUSSEROW.

Attachment “B”

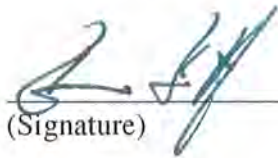
ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge the receipt of the following documents from the Hawaiian Kingdom, a State not a member of the United Nations, deposited with the Swiss Federal Council, by the Swiss Federal Department of Foreign Affairs, pursuant to Article 156 of the 1949 Geneva Convention for the Protection of Civilian Persons in Time of War:

1. Instrument of accession to the 1949 Geneva Convention for the Protection of Civilian Persons in Time of War, dated 28 November 2012.
2. Protest and Demand dated 9 August 2012.
3. CD of Annexes to the Protest and Demand and other relevant documents.
4. DVD Packet of the Larsen v. Hawaiian Kingdom arbitration case.

Benno Bättig

(Print name)



(Signature)

14.1.2013

(Date)

Instrument of Accession

Whereas a Convention for the Protection of Civilian Persons in Time of War was concluded at Geneva on 12 August 1949;

And Whereas Article 155 of the Convention specifies that the Convention shall be open to accession by any State Power;

Now Therefore, the Hawaiian Kingdom, having considered the Convention, hereby *Accedes* to it, and undertakes faithfully to abide by all the provisions contained therein.



In Witness Whereof, I have hereunto set my hand, and caused the Great Seal of the Kingdom to be affixed this 20th day of November A.D. 2012.

Peter Umialiloa Sai,
Vice-Chairman of the Acting Council of Regency
Acting Minister of Foreign Affairs

By the Council

Kau'i P. Sai-Dudoit,
Acting Minister of Finance

Attachment “C”

Kale Gumapac

HC2 BOX 9607
Kea'au, HI 96749
Phone: 808-896-7420
E-Mail: kgumapac@gmail.com

November 22, 2011

Deutsche Bank National Trust Company
C/O American Home Mortgage Servicing, Inc., 6591 Irvine Center Drive, Mail-Stop DA-AM
Irvine, CA 92618

To Whom It May Concern:

When my former wife, Dianne Dee Gumapac, and I mortgaged our property at 15-1716 Second Ave., Keaau, HI 96749, to Argent Mortgage Company, LLC, whom I borrowed \$290,000.00, we were required by Argent Mortgage Company, LLC, as a condition of the loan, to go to escrow, being Title Guaranty of Hawai'i, Inc., to purchase a loan policy in the amount of \$290,000.00 for the benefit of Argent Mortgage Company, LLC, should there be defect in title. According to the loan policy we purchased from escrow, we paid a premium of \$1,050.00 for a loan policy dated December 19, 2005 with Argent Mortgage Company, LLC, as the named insured, which I'm attaching as Exhibit "1." My wife and I have since divorced and I am the owner of the property as a tenant in severalty.

According to Black's Law Dictionary, 6th ed., title insurance is a "policy issued by a title company **after searching the title, representing the state of that title and insuring the accuracy of its search against claims of title defects.**" It is an indemnity contract that does not guarantee the state of the title but covers loss incurred from a defect in land titles that would arise from an inaccurate title report. The loan title insurance policy, which we purchased from Title Guaranty and which I've attached as Exhibit "2," states:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured [the Lender] by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - a. A defect in the Title caused by
 - i. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - ii. failure of any person or Entity to have authorized a transfer or conveyance;
 - iii. a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, **notarized**, or delivered;

- iv. failure to perform those acts necessary to create a document by electronic means authorized by law;
- v. a document executed under a falsified, expired, or otherwise invalid power of attorney;
- vi. a **document not properly filed, recorded, or indexed in the Public Records** including failure to perform those acts by electronic means authorized by law; or
- vii. a defective judicial or administrative proceeding.

On January 21, 2011, my company Laulima Title Search and Claims, LLC, formerly Hawaiian Alliance, LLC, investigated the status of my fee-simple title that was acquired from Linda Vivian Little and Alice Evelyn Little, on April 17, 2002, under document no. 2895104, on certificate no. 505,052, issuance of certificate no. 637,651 in the Hawai'i Bureau of Conveyances. Laulima provides claims packages to be filed with title insurance companies under a lender's and owner's policy.

Laullima investigation identified defects in my fee-simple title that should have been disclosed in the title report done by Title Guaranty of Hawai'i, Inc., which I paid for and which also formed the basis of the lender's title insurance policy I purchased. Laulima's processor's report is based on the expert memorandum of Dr. Keanu Sai, who has a Ph.D. in political science specializing in international relations and public law. The executive agreements cited by Dr. Sai in Laulima's package was also the topic of Dr. Sai's doctoral dissertation and law journal article published by the University of San Francisco School of Law's *Journal of Law and Social Challenges*, vol. 10 (Fall 2008). Both dissertation and law journal article can be downloaded from Dr. Sai's University of Hawai'i website at www2.hawaii.edu/~anu/publications, as well as other publications by Dr. Sai. Attached as Exhibit "3" is the report of Laulima. The report summarized the defect by stating:

"This claim involves a defect of title by virtue of an executive agreement entered into between President Grover Cleveland of the United States and Queen Lili'uokalani of the Hawaiian Kingdom, whereby the President and his successors in office were and continue to be bound to faithfully execute Hawaiian Kingdom law by assignment of the Queen under threat of war on January 17th 1893. The notaries public in the Hawaiian Islands and the registrar of the Bureau of Conveyances were not lawful since January 17th 1893, and therefore title to the estate in fee-simple described as Lot 2787, area 1.00 acre, more or less, Block 7, as shown on Map 58 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i with Land Court Application no. 1053 (amended) of W.H. Shipman, Limited, under document no. 2895104 & certificate no. 505052, filed with the Registrar of the Bureau of Conveyances on February 24th 2003, is vested other than Kale Kepekaio Gumapac and Dianne Dee Gumapac, now divorced, because the aforementioned deed of conveyance was not lawfully executed in compliance with Hawaiian Kingdom law."

The defective notary and registrar of the Hawai'i Bureau of Conveyances are covered risks under section 2(a)(iii) and 2(a)(vi) of the lender's title insurance policy I purchased for Deutsche Bank National Trust Company, as the assignee of Argent Mortgage Company, LLC. Your lawfirm that you hired, RCO Hawai'i, LLLC, foreclosed on my property under the power of sale and on February 9, 2011, filed a complaint for ejectment in the District Court of the Third Circuit, Puna Division. On April 29, 2011, a Motion to Dismiss was filed by my former wife Dianne Dee Gumapac, and after the motion was heard the complaint for ejectment and foreclosure was dismissed because there is exists a title dispute. Attached as

Exhibit "4" is the court order and transcript. On October 3, 2011, RCO filed a motion for relief from the judgment, and after the hearing, RCO's motion was denied because the issue is a title dispute.

This letter is giving notice of the defect in title and for Deutsche Bank National Trust Company to file an insurance claim with Stewart Title Guaranty Company. Deutsche Bank National Trust Company is being notified pursuant to section 3 of the title insurance policy that specifically states:

"The Insured shall notify the Company promptly in writing...in case Knowledge shall come to an insured of any claim of title or interest that is adverse to the Title or the lien of the insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy... If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice."

As the person who purchased the lender's policy for the benefit of Deutsche Bank National Trust Company, I am the one who contracted the title insurance company to protect their interest, not by choice, but rather as a condition of the loan. Hawai'i is a lien theory state, which means that I'm still the owner of the property and that Deutsche Bank National Trust Company only has a lien on my property. As a result of the defect in title, this has affected my claim to "legal" title, but I do maintain "equitable" title because I did pay valuable consideration to Linda Vivian Little and Alice Evelyn Little, on April 17, 2002, as aforementioned, as well as maintaining "actual possession."

If I have a defect in "legal" title, the mortgage lien is not enforceable and therefore invalid. To protect the lender in case of this type of situation, I was required by the original lender, Argent Mortgage Company, LLC, to purchase a loan title insurance policy in escrow or I wouldn't get the loan. The policy covered the amount I borrowed, which was \$290,000.00. When Deutsche Bank National Trust Company purchased the loan it also included the title insurance policy I purchased for the protection of Argent Mortgage Company, LLC. If there is a defect in title, which is a covered risk under the lender's policy, it pays off the balance of the loan owed to Deutsche Bank National Trust Company, being the assignee of Argent Mortgage Company, LLC. Under Section 5 of "Defense and Prosecution of Actions," the lender's policy states:

5(b). The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured.

This letter is sent to Deutsche Bank National Trust Company, assignee of Argent Mortgage Company, LLC, pursuant to section 5, 15 and 20 of the "Uniform Covenants" in the aforementioned mortgage agreement (security instrument).

5. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender.

15. All notices given by a Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail.

20. Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to the Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action.

Therefore, any judicial action taken by Deutsche Bank National Trust Company without first addressing the notice and taking corrective action pursuant to the "Uniform Covenants" of the mortgage agreement by filing a title insurance claim under the Lender's title insurance policy I purchased for the protection of the same is a direct violation and breach and I reserve the right to file a lawsuit for damages.

According to *Foehrenbach v. German-American Title & Trust Company*, 217 Pa. 331, 337 (1907), title insurance insures "against defects, unmarketability, liens and incumbrances as of that date. [The insurance company says], you are in our judgment the owner in fee of the entire interest in this property, and we will back our opinion by agreeing to hold you harmless, up to the amount of the policy, in case for any reason our judgment in this respect should prove to be mistaken." And in *Falmouth National Bank v. Ticor Title Insurance Company*, 920 F.2d 1058, 1064 (1990), the Court stated:

"The title insurance policy...provided that when presented with a claim of an adverse interest to the insured property, the insurer had the option of pursuing a quiet title action without unreasonable delay, or of paying any loss resulting from the defect. Regarding the timing of payment of the loss, the policy contained precisely the same language as Ticor's policy, namely, that 'when liability has been definitely fixed . . . the loss or damage shall be payable within 30 days thereafter.' In a lengthy opinion, the court held that the liability of the insurer was definitely fixed when it refused to take any action to quiet title. Thus, the court held that an offer of payment of the loss was due thirty days thereafter."

Deutsche Bank National Trust Company has provided me no evidence that it has filed the title insurance claim, and that the insurance company has refuted the evidence provided by Lailima Title Search and Claims, LLC, in particular:

1. providing evidence that the 1893 executive agreements entered into between President Grover Cleveland and Queen Lili'uokalani mandating the President and his successors in office to first administer Hawaiian Kingdom law (*Lili'uokalani assignment*) and second to restore the Hawaiian Kingdom government and thereafter the Queen to grant amnesty to certain insurgents (*Restoration agreement*) do not exist;
2. providing evidence that the Hawaiian Islands was annexed by a treaty which would have superseded the aforementioned executive agreements;
3. or providing evidence that the U.S. Congress has any constitutional authority to not only annex a foreign state in 1898 by a so-called joint resolution, but also enact legislation creating the so-called Territory of Hawai'i in 1900 or the so-called State of Hawai'i in 1959, since Congressional laws have no extra-territorial effect.

Therefore, any judicial action taken against me regarding my property after you have been notified of the defect constitutes a breach of contract under the "Uniform Covenants" and liable to a lawsuit for damages. And please don't give me your "unqualified opinion" regarding Lailima's title

report, because the insurance policy I was required to purchase to protect Argent Mortgage Company, LLC, and their assigns, insured the accuracy of Title Guaranty's title report and not any other individual or company's opinion, who would by definition be a third party to the contract. Because if your opinion would suffice, then why was I required to purchase the insurance policy in the first place.

THIS LETTER WILL BE USED AS EVIDENCE OF A BREACH OF CONTRACT LAWSUIT IF YOU FAIL TO FILE THE TITLE INSURANCE CLAIM UNDER THE LENDER'S TITLE INSURANCE POLICY.

Sincerely,

Kale Gumapac

cc: RCO Hawai'i, LLLC
900 Fort Street Mall, Suite 800
Honolulu, HI 9681

Exhibit “1”

25



L-404

STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

DEC 19, 2005 08:02 AM

Doc No(s) 3368985
on Cert(s) 637,651

I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances.

[Signature]
Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii



/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

20 1/1 21

*STL
LL*

After Recordation Return By: Mail Pickup To:

Argent Mortgage Company, LLC
P.O. Box 5047
Rolling Meadows, IL 60008

STC-419665/25050126

TMK:3-1-5-055-062

[Space Above This Line For Recording Data]

Total Pages 20¹⁹

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated December 12, 2005 together with all Riders to this document.

(B) "Borrower" is KALE KEPEKAIO GUMAPAC and DIANNE DRE GUMAPAC, Husband and Wife, As Tenants By the Entirety

Borrower is the mortgagor under this Security Instrument.

0091447151 - 9504

HAWAII-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3012 1/01

10510-6(HI) 00050

Page 1 of 15

Initials: *[Signature]*

VMP MORTGAGE FORMS - 18001821-7291

12/12/2005 11:43:27

(C) "Lender" is Argent Mortgage Company, LLC

Lender is a Limited Liability Company organized and existing under the laws of Delaware Lender's address is 3 Park Plaza 10th Floor Irvine, CA 92614

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated December 12, 2005 The Note states that Borrower owes Lender two hundred ninety thousand and 00/100

(U.S. \$290,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than January 1, 2036 Dollars

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- Adjustable Rate Rider
- Balloon Rider
- VA Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- 1-4 Family Rider
- Other(s) [specify]

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to

0091447151 504
Invoice

01HI 10008

time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in the County of HAWAII:

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF:

Parcel ID Number: 1-5-055-062
15-1716 2ND AVENUE
KAAU
("Property Address"):

which currently has the address of
[Street]
[City], Hawaii 96749 [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

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UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community

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Association Dues, Fees and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA; and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than twelve monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than twelve monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith

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by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law

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requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or

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regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement

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provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - If any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually

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received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any

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Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give Borrower notice of sale in the manner provided in Section 15. Lender shall publish a notice of sale and shall sell the Property at the time and place and under the terms specified in the notice of sale. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Waivers. Borrower relinquishes all right of dower and curtesy in the Property.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

Dianne Dee Gumapac (Seal)
 DIANNE DEE GUMAPAC -Borrower

Rale Kepeiao Gumapac (Seal)
 RALE KEPEIAO GUMAPAC -Borrower

_____ (Seal)
 -Borrower

_____ (Seal)
 -Borrower

_____ (Seal)
 -Borrower

_____ (Seal)
 -Borrower

_____ (Seal)
 -Borrower

_____ (Seal)
 -Borrower

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STATE OF HAWAII,

County of Hawaii

SS:

On this

12th
Day

day of DECEMBER 2005
Month/Year

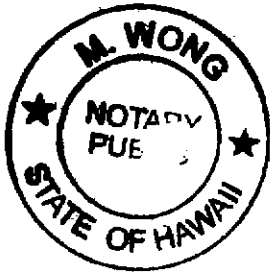
before me personally appeared

KALE KEPEKAIO GUMAPAL AND DIANNE DEE GUMAPAL

to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/her/their free act and deed.

My Commission Expires:

JUN 05 2009



Notary Public, State of Hawaii

M. WONG



ADJUSTABLE RATE RIDER

(LIBOR Six-Month-Index (As Published in the Wall Street Journal)- Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 12th day of December, 2005 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to Argent Mortgage Company, LLC (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

15-1716 2ND AVENUE, KEAAU, HI 96749
 [Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 10.700%. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of January, 2008, and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in the Wall Street Journal. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.



Initials 

Loan Number: 0091447151 - 9504

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing. If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

 (Seal)  (Seal)
 Borrower DIANNE DEE GUMAPAC Borrower KALE KEPEKAI GUMAPAC

 Borrower (Seal) Borrower (Seal)

Loan Number: 0091447151 - 9504

EXHIBIT "A"

All of that certain parcel of land situate at Keaau, District of Puna, Island and County of Hawaii, State of Hawaii, described as follows:

Lot 2787, area 1.00 acre, more or less, Block 7, as shown on Map 58, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1053 (amended) of W. H. Shipman, Limited;

TOGETHER WITH an undivided 1/5750 interest in Lots 60, 62, 8297, 8363, 8385, 8387 and 3115 in Block 7, and Lot 1 in Block 10; as shown on Maps 10, 10, 55, 56, 56, 57, 58 and 65, respectively, of said Land Court Application No. 1053 (amended); and Lot 4-b, as shown on Map 2 of Land Court Application No. 1689 of W. H. Shipman, Limited, to be used in common with others entitled thereto, for roadway and utility purposes only;

Being all of the land described in Transfer Certificate of Title No. 637,651.

Exhibit “2”

LOAN POLICY OF TITLE INSURANCE
ISSUED BY



Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection

Countersigned:



Authorized Countersignature

Company Name

City, State



Senior Chairman of the Board

Chairman of the Board

President

File No.:

Covered Risks – Cont.

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage:
 - (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (b) failure of any person or Entity to have authorized a transfer or conveyance;
 - (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (g) a defective judicial or administrative proceeding.
10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
11. The lack of priority of the lien of the Insured Mortgage upon the Title
 - (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either:

- (i) contracted for or commenced on or before Date of Policy; or
 - (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
- (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.
12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.
13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title
 - (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - i) to be timely, or
 - ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

Exclusions from Coverage

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is:
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of
 - i) the amount of the principal disbursed as of Date of Policy;
 - ii) the amount of the principal disbursed subsequent to Date of Policy;
 - iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;
 - iv) interest on the loan;
 - v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
 - vi) the expenses of foreclosure and any other costs of enforcement;
 - vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;
 - viii) the amounts to pay taxes and insurance; and
 - ix) the reasonable amounts expended to prevent deterioration of improvements; but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.
- (e) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;
 - (B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
 - (C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (D) successors to an Insured by its conversion to another kind of Entity;
 - (E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured, or
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;
 - (F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or

guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

- (ii) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.
- (f) "Insured Claimant": An Insured claiming loss or damage.
- (g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.
- (h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
 - (i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
 - (j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
 - (k) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
 - (l) "Title": The estate or interest described in Schedule A.
 - (m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

CONDITIONS – Continued

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks,

memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.
- (i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or
- (ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.
- When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.
- Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
- (i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
- (ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

CONDITIONS - Continued

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of
 - (i) the Amount of Insurance,
 - (ii) the Indebtedness,
 - (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or
 - (iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,
 - (i) the Amount of Insurance shall be increased by 10%, and
 - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.
- (d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

- (a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.
- (b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) The Company's Right to Recover.

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.
- (b) The Insured's Rights and Limitations.
 - (i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.
 - (ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.
- (c) The Company's Rights Against Noninsured Obligors

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights. The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

13. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

CONDITIONS – Continued

**14. LIABILITY LIMITED TO THIS POLICY;
POLICY ENTIRE CONTRACT.**

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. SEVERABILITY.

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

16. CHOICE OF LAW; FORUM.

- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. NOTICES, WHERE SENT.

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Claims Department at P.O. Box 2029, Houston, TX 77252-2029.



Stewart Title Guaranty Company

SCHEDULE A

Order No.: 25050126

Policy No.: M-9994-8370850

Liability: \$290,000.00

Premium Amount.: \$1,050.00

Date of Policy: December 19, 2005 at 8:02 a. m.

1. Name of Insured:

ARGENT MORTGAGE COMPANY, LLC, a Limited Liability Company, organized and existing under the laws Delaware

2. The estate or interest referred to herein is at Date of Policy vested in:

KALE KEPEKAI O GUMAPAC and **DIANNE DEE GUMAPAC**, husband and wife, as Tenants by the Entirety

3. The estate or interest in the land described in Schedule "C" and which is encumbered by the insured mortgage is:

FEE SIMPLE ESTATE

4. The mortgage, herein referred to as the insured mortgage, and the assignments thereof, if any, are described as follows:

MORTGAGE

Mortgagor: Kale Kepekaio Gumapac and Dianne Dee Gumapac, husband and wife, as Tenants by the Entirety

Mortgagee: Argent Mortgage Company, LLC, a Limited Liability Company, organized and existing under the laws Delaware

Dated: December 12, 2005

Recorded: December 19, 2005

Document No. 3368985

To Secure: \$290,000.00

5. The land referred to in this policy is described as follows:

SEE SCHEDULE C ATTACHED HERETO

Schedule B

EXCEPTIONS FROM COVERAGE

Order No.: 25050126

Policy No.: M-9994-8370850

PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) which arise by reason of:

1. TAXES Tax Map Key: HAWAII 1-5-055-062

Hawaii 2005-2006 TAX ROLL

	2005	VALUE	EXEMPTION	NET
BLDG		144,300	111,800	32,500
LAND		14,600	0	14,600
TOTAL		158,900		47,100

Taxes for the Fiscal Year 2005-2006 are a lien; payable as follows:

1st Installment:	\$130.71	PAID
2nd Installment:	\$130.70	DUE FEBRUARY 20, 2006

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. AS TO LOTS 60 AND 62 ONLY:

GRANT

In Favor of:	Lot 58
Dated:	September 24, 1945
Document No.	104733
Purpose:	Easement for right-of-way purposes over and across a portion of the land herein described

Schedule B

EXCEPTIONS FROM COVERAGE - (Continued)

Order No.: 25050126

Policy No.: M-9994-8370850

4. AS TO LOT 4-B ONLY:

- a) The terms and provisions of:

LEASE OF RIGHT-OF-WAY

In Favor of: Hawaiian Telephone Company, now known as Hawaiian Telcom, Inc., a Hawaii corporation

Dated: May 6, 1955, and thereafter from year to year until terminated

Document No. 181820

Term: 30 years from May 6, 1955, &c

Purpose: Easement for utility purposes over, under, across and through a portion of the land herein described

- b) Perpetual covenants as contained in Deed

Dated: October 15, 1965

Document No. 382223

Re: Reservation in favor of Hawaiian Paradise Park Corp., its successors and assigns, to grant licenses, easements and privileges to others in, over, across and through said roadway lots for utilities, access and other service purposes

- c) Unrecorded right of way in favor of Olaa Sugar Company, Limited, as set forth in Deed

Dated: February 24, 2003

Document No. 2895104

5. AS TO LOTS 62 AND 8387 ONLY:

- a) Easement 29 over and across Lot 62, as shown on Map 10, and Easement 30 over and across Lot 8387, as shown on Map 57, for utility purposes, as set forth by Land Court Order No. 17102, filed on April 24, 1959.

- b) GRANT

In Favor of: Hilo Electric Light Company, Limited, now known as Hawaii Electric Light Company, Inc.

Dated: April 24, 1959

Document No. 236028

Purpose: Easement for right-of-way purposes over and across a portion of the land herein described

Schedule B

EXCEPTIONS FROM COVERAGE - (Continued)

Order No.: 25050126

Policy No.: M-9994-8370850

6. AS TO LOTS 60, 62, 8297, 8363, 8385, 8387, 3115, 1 AND 4-B ONLY:

a) Reservations and exceptions as contained in:

DEED

Dated: July 22, 1964

Document No. 347375

to which reference is hereby made

b) AS TO LOTS 8297, 8363, 8385, 3115 AND 1 ONLY:

QUITCLAIM ASSIGNMENT OF RESERVATION OF RIGHTS

Said Hawaiian Paradise Park Corp., assigns all of their estate, right, title and interest in and to those certain exceptions, reservations and powers to grant licenses, easements and privileges to others in, over, across and through Roadway Lots for utilities, access and other service purposes, to Paradise Hui Hanalike, a Hawaii nonprofit corporation, as set forth by Land Court Order No. 77755, filed on April 2, 1986.

7. The effects, if any, of the Supreme Court opinion rendered on April 25, 1983, Supreme Court Case No. 8699, concerning road maintenance fees for the Hawaiian Paradise Park Subdivision, to-wit:

"Roads-abutting lot owners-duty to contribute to maintenance. Where a subdivision is created consisting of lots and private roadways servicing them and the lot deeds are silent as to any duty to contribute to the maintenance of the roads, owners of lots abutting the roads have a legal duty to contribute to necessary road maintenance."

(NOTE: Not noted on the Transfer Certificate of Title referred to herein.)

8. AS TO THE UNDIVIDED INTEREST IN LOTS 8297 AND 8387 ONLY:

FINAL ORDER OF CONDEMNATION - CIVIL NO. 89-212 - THIRD CIRCUIT COURT

In Favor of: State of Hawaii

Dated: August 20, 1990

Purpose: condemnation of a portion of the lots more particularly described therein

(NOTE: Not noted on the Transfer Certificate of Title referred to herein.)

Schedule B

PART II

Order No.: **25050126**

Policy No.: **M-9994-8370850**

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule (A) is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

NONE

SCHEDULE C

All of that certain parcel of land situate at Keaau, District of Puna, Island and County of Hawaii, State of Hawaii, described as follows:

Lot 2787, area 1.00 acre, more or less, Block 7, as shown on Map 58, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1053 (amended) of W. H Shipman, Limited;

TOGETHER WITH an undivided 1/5750 interest in Lots 60, 62, 8297, 8363, 8385, 8387 and 3115 in Block 7, and Lot 1 in Block 10; as shown on Maps 10, 10, 55, 56, 56, 57, 58 and 65, respectively, of said Land Court Application No. 1053 (amended); and Lot 4-b, as shown on Map 2 of Land Court Application No. 1689 of W. H. Shipman, Limited, to be used in common with others entitled thereto, for roadway and utility purposes only;

Being all of the land described in Transfer Certificate of Title No. 637,651.

ENDORSEMENT 100
Attached to and forming a part of
Policy No. M-9994-8370850
Issued by
Stewart Title Guaranty Company

The Company hereby insures against loss which the insured shall sustain by reason of any of the following matters:

1. Any incorrectness in the assurance which the Company hereby gives:
 - (a) That there are no covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be cut off, subordinated, or otherwise impaired;
 - (b) That there are no present violations on the land of any enforceable covenants, conditions or restrictions;
 - (c) That, except as shown in Schedule B, there are no encroachments of buildings, structures or improvements located on the land onto adjoining lands, nor any encroachments onto the land of buildings, structures or improvements located on adjoining lands.
2.
 - (a) Any future violations on the land of any covenants, conditions or restrictions occurring prior to acquisition of title to the estate or interest referred to in Schedule A by the insured, provided such violations result in impairment or loss of the lien of the mortgage referred to in Schedule A, or result in impairment or loss of the title to the estate or interest referred to in Schedule A if the insured shall acquire such title in satisfaction of the indebtedness secured by the insured mortgage;
 - (b) Unmarketability of the title to the estate or interest referred to in Schedule A by reason of any violations on said land, occurring prior to acquisition of title to the estate or interest referred to in Schedule A by the insured, of any covenants, conditions or restrictions.
3. Damage to existing improvements, including lawns, shrubbery or trees
Which are located or encroach upon that portion of the land subject to any easement shown in Schedule B, which damage results from the exercise of the right to use or maintain such easement for the purposes for which the same was granted or reserved;
4. Any final court order or judgment requiring removal from any land adjoining the land of any encroachment shown in Schedule B.

Wherever in this endorsement any or all the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants and conditions contained in any lease referred to in Schedule A.

For purposes of this endorsement, the words "covenants," "conditions" or "restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection, except to the extent that a notice of a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy and is not excepted in Schedule B.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.


Dated: December 19, 2005 at 8:02 a. m.

**Security Title Corporation, as Agent for
Stewart Title Guaranty Company**



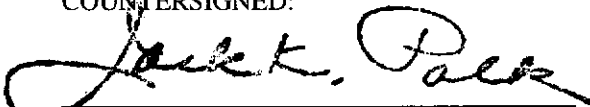
President





Chairman of the Board

COUNTERSIGNED:



Authorized Officer or Agent

ORDER NO. 25050126

ENDORSEMENT 110.9
Attached to and forming a part of
Policy No. M-9994-8370850
Issued by

Stewart Title Guaranty Company

The insurance afforded by this endorsement is only effective if the land is to be used primarily for residential purposes.

The Company insures the Insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

- (a) any environmental protection lien which, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or filed in the records of the clerk of the United States District Court for the district in which the land is located, except as set forth in Schedule B; or
- (b) any environmental protection lien provided for by any state statute in effect at Date of Policy, except environmental protection liens provided by the following state statutes:

NONE

This endorsement is made a part of said policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.


Dated: December 19, 2005 at 8:02 a. m.

**Security Title Corporation, as Agent for
Stewart Title Guaranty Company**



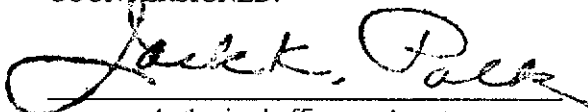
President





Chairman of the Board

COUNTERSIGNED:



Authorized officer or Agent

ORDER NO. 25050126

ENDORSEMENT 116

Attached to and forming a part of
Policy No. M-9994-8370850
Issued by

Stewart Title Guaranty Company

The Company assures the insured that at Date of Policy there is located on said land a **single family dwelling** known as **15-1716 2nd Avenue, Keaau, HI 96749** and that the map attached to this policy shows the correct location and dimensions of said land according to those records which, under the recording laws impart said notice as to said land.

The Company hereby insures the insured against loss which the insured shall sustain in the event that the assurance herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay,

This endorsement is made a part of said policy and is subject to the exclusions from coverage, schedules, conditions and stipulations therein, except as modified by the provisions hereof.

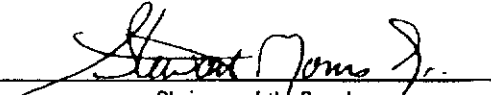
Dated: December 19, 2005 at 8:02 a. m.

**Security Title Corporation, as Agent for
Stewart Title Guaranty Company**



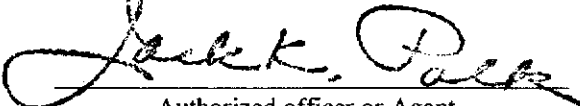
President





Chairman of the Board

COUNTERSIGNED:



Authorized officer or Agent

ORDER NO. 25050126

ENDORSEMENT 100.29
Attached to and forming a part of
Policy No. M-9994-8370850
Issued by

Stewart Title Guaranty Company

The Company insures the insured against loss which the insured shall sustain by reason of

damage to existing improvements, including lawns, shrubbery or trees, resulting from the exercise of any right to use the surface of the land for the extraction or development of the minerals excepted from the description of the land or shown as a reservation in Schedule B.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof..

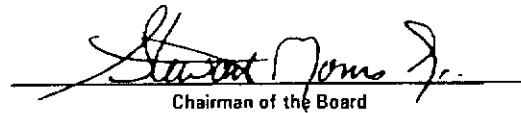
Dated: December 19, 2005 at 8:02 a. m.

**Security Title Corporation, as Agent for
Stewart Title Guaranty Company**



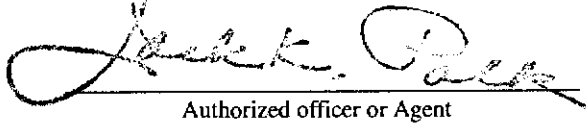
President





Chairman of the Board

COUNTERSIGNED:



Authorized officer or Agent

ORDER NO. 25050126

ENDORSEMENT 111.5
Attached to and forming a part of
Policy No. M-9994-8370850
Issued by

Stewart Title Guaranty Company

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest.
2. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by the changes in the rate of interest.

"Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon

- (a) usury, or
- (b) any consumer credit protection or truth in lending law.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

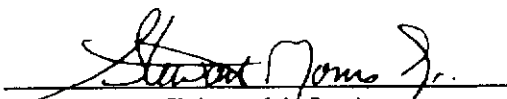
Dated: December 19, 2005 at 8:02 a. m.

**Security Title Corporation, as Agent for
Stewart Title Guaranty Company**



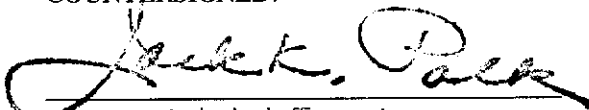
President





Chairman of the Board

COUNTERSIGNED:



Authorized officer or Agent

Exhibit “3”

Claim Report			
Hawaiian Alliance, LLC HC2 Box 9607 Kea'au, HI 96749 Phone no. (808) 982-9020 Email: kgumapac@gmail.com Re: Kale Kepekaio Gumapac and Dianne Dee Gumapac	Report Date	Claim no.	Investigator
	January 21, 2011	2011-2	Dr. Keanu Sai
	Policy no.	Policy issued	
T76-000020391	February 24, 2003		
Assigned	Investigated		
January 18, 2011	January 21, 2011		

Policy:
Owner's (Ticor Title Insurance)

Coverage:
Fee-simple Title

Amount:
\$ 178,000.00

Description of Property:

Lot 2787, area 1.00 acre, more or less, Block 7, as shown on Map 58 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i with Land Court Application no. 1053 (amended) of W.H. Shipman, Limited, under document no. 2895104 & certificate no. 505052, filed with the Registrar of the Bureau of Conveyances on February 24th 2003.

Defect in Title Summary:

Owner's deed was not lawfully executed according to Hawaiian Kingdom law.

Total Claim:

\$ 178,000.00

Enclosures: Proof of Defect

Kale Kepekaio Gumapac and Dianne Dee Gumapac, now divorced, the insured, retained Hawaiian Alliance, LLC, to do an investigation of their fee-simple title situated at Keaau, District of Puna, Island of Hawai'i. This claim involves a defect of title by virtue of an executive agreement entered into between President Grover Cleveland of the United States and Queen Lili'uokalani of the Hawaiian Kingdom, whereby the President and his successors in office were and continue to be bound to faithfully execute Hawaiian Kingdom law by assignment of the Queen under threat of war on January 17th 1893. The notaries public in the Hawaiian Islands and the registrar of the Bureau of Conveyances were not lawful since January 17th 1893, and therefore title to the

estate in fee-simple described as Lot 2787, area 1.00 acre, more or less, Block 7, as shown on Map 58 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i with Land Court Application no. 1053 (amended) of W.H. Shipman, Limited, under document no. 2895104 & certificate no. 505052, filed with the Registrar of the Bureau of Conveyances on February 24th 2003, is vested other than Kale Kepekaio Gumapac and Dianne Dee Gumapac, now divorced, because the aforementioned deed of conveyance was not lawfully executed in compliance with Hawaiian Kingdom law.

Sincerely,

Momilani Glushenko
Vice President Operations
Hawaiian Alliance, LLC

Enclosure “1”



Expert Memorandum Regarding the Legal Continuity of the Hawaiian Kingdom and the Fee-simple Title being Vested Other than Kale Kepekaio Gumapac and Dianne Dee Gumapac

January 21st 2011

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,

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.



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.

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.3d 1271 (2004).

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

¹⁰ JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 700 (2nd ed., 2006).

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 119 (6th ed., 2007).



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

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 Agreement*. 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

¹⁸ Exhibit A, 461.

¹⁹ 5 Hawai`i 73, 76 (1883)

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



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 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

²¹ Exhibit A, 462.

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.



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 to 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 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

²⁴ Exhibit A, 464.

²⁵ Exhibit B, 1242.

²⁶ *Id.*

²⁷ *Id.*, 457.

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

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



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 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

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 Senate Executive Document no. 13, Fifty-third Congress, second session, *Message from the President of the United States on the Hawaiian Question* (December 18th 1893), 1191.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*, 1192.



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 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

³⁷ Exhibit B, 1267.

³⁸ *Id.*, 1269.

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



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 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.

⁴⁰ *Id.*



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 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

⁴¹ Exhibit B, 1283-1284.

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

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

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

⁴⁵ *Id.*, 397.



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 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

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).

⁵¹ *Id.*

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



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. 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."⁵³ 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.⁵⁴

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, 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*,⁵⁵ 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."⁵⁶ 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

⁵³ KRYSZYNA MAREK, *IDENTITY AND CONTINUITY OF STATES IN PUBLIC INTERNATIONAL LAW* (1968), 102.

⁵⁴ 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).

⁵⁵ United Nations, "Responsibility of States for Internationally Wrongful Acts" (2001), Article 12.

⁵⁶ *Id.*, Article 14(2).



President binds “himself and his successors in office by executive agreements.”⁵⁷ More importantly, the U.S. “may not rely on the provisions of its internal law as justification for failure to comply with its obligation.”⁵⁸

Since 1900, the United States Congress has enacted additional legislation establishing a government for the Territory of Hawai`i,⁵⁹ and in 1959 transformed the Territory of Hawai`i into the State of Hawai`i.⁶⁰ According to Born, “American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction.”⁶¹ In *Rose v. Himely* (1807), the Court illustrated this view by asserting, “that the legislation of every country is territorial.”⁶² In *The Apollon* (1824), the Court stated that the “laws of no nation can justly extend beyond its own territory”⁶³ for it would be “at variance with the independence and sovereignty of foreign nations,”⁶⁴ and in *U.S. v. Belmont* (1937), Justice Sutherland resounded, “our Constitution, laws and policies have no extraterritorial operation, unless in respect of our own citizens.”⁶⁵ 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.”⁶⁶

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 remain binding on the United States under both international law and Federal law. §207(a), 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 responsibilities and functions of government, or of any constitutional or other internal rules or

⁵⁷ QUINCY WRIGHT, *THE CONTROL OF AMERICAN FOREIGN RELATIONS* 235 (1922).

⁵⁸ Responsibility of States, Article 31(1).

⁵⁹ 31 U.S. Stat. 141 (1900).

⁶⁰ 73 U.S. Stat. 4 (1959).

⁶¹ GARY BORN, *INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS* 493 (3rd ed. 1996).

⁶² *Rose v. Himely*, 8 U.S. 241, 279 (1807).

⁶³ *The Apollon*, 22 U.S. 362, 370 (1824).

⁶⁴ *Id.*

⁶⁵ *U.S. v. Belmont*, 301 U.S. 324, 332 (1937).

⁶⁶ Douglas Kmiec, *Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea*, 12 Op. Off. Legal Counsel 238-263, 252 (1988).



limitations.” And §115(b), Restatement (Third), 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.” The United States cannot benefit from the violation of these executive agreements under the doctrine of estoppel.

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.⁶⁷ With regard to real estate transactions, the execution of a deed of conveyance and mortgage under Hawaiian law must first be acknowledged by “the party or parties executing the same, before the Registrar of Conveyances, or his agent, or some judge of a court of record, or notary public of this Kingdom,”⁶⁸ and then recorded in the Bureau of Conveyances, where “all deeds, leases for a term of more than one year, or other conveyances of real estate within this Kingdom shall be recorded in the office of the Registrar of Conveyances (§1262, Compiled Laws).” According to Justice Judd, *Kaaihue, et al., v. Crabbe et al.* (1877),⁶⁹ “The Legislature deemed it advisable that deeds of landed property should be recorded.” “No acknowledgment of any conveyance or other instrument, whereby any real estate is conveyed or may be affected shall be taken, unless the person offering to make such acknowledgment shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance or instrument as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness known to the officer.”⁷⁰ That “no person who is not a subject of

⁶⁷ *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.

⁶⁸ Compiled Laws, Hawaiian Civil Code, §1255.

⁶⁹ 3 Haw. 768, 773 (1877)

⁷⁰ Compiled Laws, Hawaiian Civil Code, 407



this Kingdom shall be eligible to the office of notary public,”⁷¹ and there “shall be a bureau in the department of the Interior to be called the Bureau of Conveyances; and His Majesty shall appoint, upon the nomination of the Minister of the Interior, some suitable person to superintend said Bureau, under the direction of said minister, who shall be styled the ‘Registrar of Conveyances.’”⁷²

Deeds of conveyance of real property and mortgages after January 17th 1893 cannot be considered lawfully executed because the “Registrar of Conveyances, or his agent, or some judge of a court of record, or notary public” were not lawfully vested with the authority to acknowledge the execution of deeds of conveyance and mortgages because they were insurgents and members of the so-called provisional government and its successor the Republic of Hawai‘i—not officers of the Hawaiian Kingdom. Since August 12th 1898, execution of deeds of conveyance of real estate and mortgages also cannot be considered lawfully executed because these insurgents were maintained under the Territory of Hawai‘i government. Hawaiian Kingdom law was not being administered by the U.S. military command by virtue of the *Lili‘uokalani assignment* and article 43, Hague Convention, IV (1907). In effect, this renders all conveyances of real estate and mortgages securing the repayment of loans within Hawaiian territory since January 17th 1893 to the present null and void. The notary public and registrar of the Bureau of Conveyances were not competent to execute deeds or mortgages.

Kale Kepekaio Gumapac's and Dianne Dee Gumapac's Claim to a Fee-simple title

On April 17th 2002 Linda Vivian Little, single, and Alice Evelyn Little, unmarried, conveyed to Kale Kepekaio Gumapac and Dianne Dee Gumapac, husband and wife, an interest in fee-simple in and to Lot 2787, area 1.00 acre, more or less, Block 7, as shown on Map 58 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai‘i with Land Court Application no. 1053 (amended) of W.H. Shipman, Limited, under document no. 2895104 & certificate no. 505052, filed with the Registrar of the Bureau of Conveyances on February 24th 2003 (Exhibit C). On December 12th 2005, Kale Kepekaio Gumapac and Dianne Dee Gumapac, husband and wife, mortgaged to Argent Mortgage Company, LLC, organized and existing under the laws of Delaware, a lien in and to Lot 2787, area 1.00 acre, more or less, Block 7, as shown

⁷¹ *Id.*, §1267

⁷² *Id.*, §1249



on Map 58 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai`i with Land Court Application no. 1053 (amended) of W.H. Shipman, Limited, under document no. 3368985 and certificate no. 637651, filed with the Registrar of the Bureau of Conveyances on December 19th 2005 (Exhibit D). The aforementioned deed of conveyance was not lawfully executed for want of a competent notary public pursuant to §1267 of the Compiled Laws, and a competent registrar of the Bureau of Conveyances pursuant to §1249 of the Compiled Laws. In the aforementioned deed and mortgage the notary public and registrar were officers of the government of the State of Hawai`i and not the government of the Hawaiian Kingdom, which is in direct conflict with the *Lili`uokalani assignment*, which mandates the President to administer the laws of the Hawaiian Kingdom and not the laws of the United States to include the laws of the State of Hawai`i, and the *Supremacy clause* under the U.S. constitution, article VI, clause 2.

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 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. Therefore, title to the estate in fee-simple described as Lot 2787, area 1.00 acre, more or less, Block 7, as shown on Map 58 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai`i with Land Court Application no. 1053 (amended) of W.H. Shipman, Limited, is vested other than Kale Kepekaio Gumapac and Dianne Dee Gumapac, now divorced. Consequently, mortgages cannot be considered valid if the mortgagor was not vested with title to the real estate mortgaged to secure the promissory note taken out with mortgagee. The mortgagee can claim no superior right to the mortgaged property than the mortgagor can claim. Equitable relief for Argent Mortgage Company, LLC, organized and existing under the laws of Delaware, is provided under lender's title insurance policy no. M-9994-8370850, Stewart Title Guaranty Company, committed December 19th 2005 at 8:02 am (Exhibit E), and relief for Kale Kepekaio Gumapac and Dianne Dee Gumapac, now divorced, is provided under owner's title insurance policy no. T76-000020391, Ticor Title Insurance Company, committed February 24th 2003 at 8:01 am (Exhibit F).



Keanu Sai, Ph.D.

Exhibit A

APPENDIX II

FOREIGN RELATIONS

OF THE

UNITED STATES

1894

AFFAIRS IN HAWAII



WASHINGTON
GOVERNMENT PRINTING OFFICE
1895

House Ex. Doc. No. 47, Fifty-third Congress, second session.

PRESIDENT'S MESSAGE

RELATING TO THE

HAWAIIAN ISLANDS.

DECEMBER 18, 1893.

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.

Mr. Gresham to Mr. Willis.

[Telegram.]

DEPARTMENT OF STATE,
Washington, December 3, 1893.

Your dispatch, which was answered by steamer on the 25th of November, seems to call for additional instructions.

Should the Queen refuse assent to the written conditions, you will at once inform her that the President will cease interposition in her behalf, and that while he deems it his duty to endeavor to restore to the sovereign the constitutional government of the islands, his further efforts in that direction will depend upon the Queen's unqualified agreement that all obligations created by the Provisional Government in a proper course of administration shall be assumed and upon such pledges by her as will 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. 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.

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.

Should the Queen accept conditions and the Provisional Government refuse to surrender, you will be governed by previous instructions. If the Provisional Government asks whether the United States will hold the Queen to fulfillment of stipulated conditions, you will say, the President, acting under dictates of honor and duty as he has done in endeavoring to effect restoration, will do all in his constitutional power to cause observance of the conditions he has imposed.

GRESHAM.

Exhibit B

APPENDIX II

FOREIGN RELATIONS

OF THE

UNITED STATES

1894

AFFAIRS IN HAWAII



WASHINGTON
GOVERNMENT PRINTING OFFICE
1895

House Ex. Doc. No. 70, Fifty-third Congress, second session.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

Certain further information relating to the Hawaiian Islands.

JANUARY 13, 1894.—Referred to the Committee on Foreign Affairs and ordered to be printed.

To the Congress:

I transmit herewith copies of all dispatches from our minister at Hawaii relating in any way to political affairs in that country, except such as have been heretofore laid before the Congress.

I also transmit a copy of the last instructions sent to our minister, dated January 12, 1894, being the only instructions to him not already sent to the Congress.

In transmitting certain correspondence with my message, dated December 18, 1893, I withheld a dispatch from our present minister, numbered 3, and dated November 16, 1893, and also a dispatch from our former minister, numbered 70, and dated October 8, 1892. Inasmuch as the contents of the dispatch of November 16, 1893, are referred to in the dispatches of a more recent date now sent to Congress, and inasmuch as there seems no longer to be sufficient reason for withholding said dispatch, a copy of the same is herewith submitted. The dispatch, numbered 70, and dated October 8, 1892, above referred to, is still withheld for the reason that such a course still appears to be justifiable and proper.

GROVER CLEVELAND.

EXECUTIVE MANSION, *January 13, 1894.*

Mr. Willis to Mr. Gresham.

No. 3.]

LEGATION OF THE UNITED STATES,
Honolulu, November 16, 1893.

SIR: In the forenoon of Monday the 13th instant, by prearrangement, the Queen, accompanied by the royal chamberlain, Mr. Robertson, called at the legation. No one was present at the half-hour interview which followed, her chamberlain having been taken to another room and Consul-General Mills, who had invited her to come, remaining in the front of the house to prevent interruption.

After a formal greeting, the Queen was informed that the President of the United States had important communications to make to her and she was asked whether she was willing to receive them alone and in confidence, assuring her that this was for her own interest and safety. She answered in the affirmative.

I then made known to her 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. To this, she bowed her acknowledgments.

I then said to her, "The President expects and believes that when reinstated you will show forgiveness and magnanimity; that you will wish to be the Queen of all the people, both native and foreign born; that you will make haste to secure their love and loyalty and to establish peace, friendship, and good government." To this she made no reply. After waiting a moment, I continued: "The President not only tenders you his sympathy but wishes to help you. Before fully making known to you his purposes, I desire to know whether you are willing to answer certain questions which it is my duty to ask?" She answered, "I am willing." I then asked her, "Should 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." She hesitated a moment and then slowly and calmly answered: "There are certain laws of my Government by which I shall abide. My decision would be, as the law directs, that such persons should be beheaded and their property confiscated to the Government." I then said, repeating very distinctly her words, "It is your feeling that these people should be beheaded and their property confiscated?" She replied, "It is." I then said to her, "Do you fully understand the meaning of every word which I have said to you, and of every word which you have said to me, and, if so, do you still have the same opinion?" Her answer was, "I have understood and mean all I have said, but I might leave the decision of this to my ministers." To this I replied, "Suppose it was necessary to make a decision before you appointed any ministers, and that you were asked to issue a royal proclamation of general amnesty, would you do it?" She answered, "I have no legal right to do that, and I would not do it." Pausing a moment she continued, "These people were the cause of the revolution and 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." I then said, "I have no further communication to make to you now, and will have none until I hear from my Government, which will probably be three or four weeks."

Nothing was said for several minutes, when I asked her whether she was willing to give me the names of four of her most trusted friends, as I might, within a day or two, consider it my duty to hold a consultation with them in her presence. She assented, and gave these names: J. O. Carter, John Richardson, Joseph Nawahi, and E. C. Macfarlane.

I then inquired whether she had any fears for her safety at her present residence, Washington Square. She replied that she did have some fears, that while she had trusty friends that guarded her house every night, they were armed only with clubs, and that men shabbily dressed had been often seen prowling about the adjoining premises—a schoolhouse with large yard. I informed her that I was authorized by the President to offer her protection either on one of our war ships

or at the legation and desired her to accept the offer at once. She declined, saying she believed it was best for her at present to remain at her own residence. I then said to her that at any moment, night or day, this offer of our Government was open to her acceptance.

The interview thereupon, after some personal remarks, was brought to a close.

Upon reflection, I concluded not to hold any consultation at present with the Queen's friends, as they have no official position, and furthermore, because I feared, if known to so many, her declarations might become public, to her great detriment, if not danger, and to the interruption of the plans of our Government.

Mr. J. O. Carter is a brother of Mr. H. A. P. Carter, the former Hawaiian minister to the United States, and is conceded to be a man of high character, integrity, and intelligence. He is about 55 years old. He has had no public experience. Mr. Macfarlane, like Mr. Carter, is of white parentage, is an unmarried man, about 42 years old, and is engaged in the commission business. John Richardson is a young man of about 35 years old. He is a cousin of Samuel Parker, the half-caste, who was a member of the Queen's cabinet at the time of the last revolution. He is a resident of Maui, being designated in the directory of 1889 as "attorney at law, stock-raiser, and proprietor Bismark livery stable." Richardson is "half-caste." Joseph Nawaki is a full-blooded native, practices law (as he told me) in the native courts, and has a moderate English education. He has served twenty years in the legislature, but displays very little knowledge of the structure and philosophy of the Government which he so long represented. He is 51 years old, and is president of the native Hawaiian political club.

Upon being asked to name three of the most prominent native leaders, he gave the names of John E. Bush, R. W. Wilcox, and modestly added, "I am a leader." John E. Bush is a man of considerable ability, but his reputation is very bad. R. W. Wilcox is the notorious half-breed who engineered the revolution of 1889. Of all these men Carter and Macfarlane are the only two to whom the ministerial bureaus could be safely entrusted. In conversation with Sam Parker, and also with Joseph Nawahi, it was plainly evident that the Queen's implied condemnation of the constitution of 1887 was fully indorsed by them.

From these and other facts which have been developed I feel satisfied that there will be a concerted movement in the event of restoration for the overthrow of that constitution which would mean the overthrow of constitutional and limited government and the absolute dominion of the Queen.

The law referred to by the Queen is Chapter VI, section 9 of the Penal Code, as follows:

Whoever shall commit the crime of treason shall suffer the punishment of death and all his property shall be confiscated to the Government.

There are, under this law, no degrees of treason. Plotting alone carries with it the death sentence.

I need hardly add, in conclusion, that the tension of feeling is so great that the promptest action is necessary to prevent disastrous consequences,

I send a cipher telegram asking that Mr. Blount's report be withheld for the present, and I send with it a telegram, not in cipher, as follows:

Views of the first party so extreme as to require further instructions.

I am, etc.

ALBERT S. WILLIS.

Mr. Willis to Mr. Gresham.

No. 6.]

LEGATION OF THE UNITED STATES,
Honolulu, November 19, 1893.

SIR: It will be remembered that in connection with the presentation on the 19th of July, 1893, of a cane to Mr. Claus Spreckels, there was an unwarrantable use of the name of Hon. James H. Blount, late envoy extraordinary and minister plenipotentiary at Honolulu.

On yesterday, November 18, Hon. Sanford B. Dole, minister of foreign affairs, transmitted a letter dated July 24, 1893, addressed by him to Mr. Charles Crighton, calling his (Crighton's) attention to the improper and unauthorized use of Mr. Blount's name and asking an apology therefor. He also inclosed Mr. Crighton's answer to the effect that Mr. Blount—

had no knowledge of the preparation of the said cane nor of the presentation thereof to Col. Spreckels, and it was not the intention of the donors of the same to intimate in any way that he (Mr. Blount) was interested or in any way concerned in or cognizant of the said presentation.

I can further assure your excellency, continues Mr. Crighton, that if Mr. Blount deems that any act of discourtesy to him has been committed that nothing was further from our intentions, and at the time we had no idea that such an inference could be drawn from the occurrence, more than could be drawn from Mr. Johnston's list.

I will file these letters in the Department and presume that the matter will end here.

With high regard, etc.,

ALBERT S. WILLIS.

Mr. Willis to Mr. Gresham.

No. 7.]

LEGATION OF THE UNITED STATES,
Honolulu, December 1, 1893.

SIR: I have the honor to inclose herewith a printed statement presented by Hon. S. M. Damon, minister of finance, showing the financial condition of the Provisional Government for week ending November 29, 1893.

With high regard, etc.,

ALBERT S. WILLIS.

[Inclosure.]

TUESDAY, *November 23.*

The executive and advisory councils met at 1:30 this afternoon, President Dole in the chair. The members present were: Ministers King, Damon, and Smith, and Councilors Hatch, Ena, Brown, Waterhouse, Emmeluth, Tenney, Wilder, Young, Allen, Morgan, and Mendonca. Minister of Finance Damon then presented his weekly report, as follows:

Finance statement for week ending November 23, 1893.

Current account balance.....	\$136,481.84
Loan fund account balance.....	368.89
Total treasury balance.....	\$136,850.73

HAWAIIAN ISLANDS.

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Finance statement for week ending November 23, 1893—Continued.

RECEIPTS.

Interior department.....	\$2,988.00	
Customs.....	7,274.25	
Fines, penalties, and costs.....	36.70	
Revenue stamps.....	336.50	
Water.....	375.00	
Post-office.....	600.00	
Taxes.....	2,452.80	
Crown lands.....	850.00	
		\$14,913.25
		<u>151,763.98</u>

EXPENDITURES.

Finance department, salaries, incidentals, etc.....	\$74.25	
Interest.....	3,583.00	
Attorney-general's department.....	50.00	
Road tax—to special deposit.....	256.00	
School tax—to special deposit.....	258.00	
		\$4,221.25
Current account balance.....	147,173.84	
Loan fund account balance.....	368.89	
		<u>147,542.73</u>
		<u>151,763.98</u>
Outstanding bonds.....	2,653,200.00	
Treasury notes.....	40,000.00	
Due postal savings bank and Postmaster-General's notes.....	705,416.95	
		<u>3,398,616.95</u>
Less loan fund balance.....		368.89
		<u>3,398,248.06</u>

Postal Savings Bank memorandum.

Notices this date of withdrawals maturing in November and December, 1893, and January and February, 1894.....	\$31,474.00
Cash on hand, Postal Savings Bank this day.....	29,381.15

Expenses Provisional Government memorandum.

Expenses Provisional Government this date.....	\$159,954.21
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This amount covers all expenses, including military and items not appropriated by the last legislature.

Memorandum cash in treasury outstanding.

Certificates.....	\$284,000.00
Certificates, withdrawn from circulation, and deposited for safe-keeping.....	28,000.00
Cash in treasury to redeem certificates.....	284,000.00
Certificates in treasury to redeem certificates.....	284,000.00
Cash in treasury to redeem certificates.....	284,000.00
	<u>29,381.15</u>
Cash on hand, Postal Savings Bank.....	51,624.03
Road board fund in treasury.....	38,143.48
School board fund in treasury.....	147,542.73
Available cash, as above.....	<u>266,691.39</u>

This was received and placed on file.

Mr. Willis to Mr. Gresham.

[Confidential.]

No. 8.]

LEGATION OF THE UNITED STATES,
Honolulu, December 5, 1893.

SIR: On November 24 the British war ship *Champion* arrived, Capt. Rooke commanding. He has about 250 men. On reaching here a telegraphic order was handed him, which will detain him until the difficulties here are settled.

On Saturday, December 2, the Japanese cruiser *Naniwa Kau*, Capt. Mosi commanding, arrived. She will also remain here until a settlement.

On Friday, November 24, your letter appeared in the Honolulu papers and created a great sensation. Crowds were gathered at all points on the streets discussing the news, but, although the excitement was so intense, I am glad to report that there was not a single breach of the peace. A public meeting was called, for the following night, of all friends of the Provisional Government. The meeting was held, the annexation papers stating that there were 1,600 present and the royalist papers putting the number at between 700 and 800. The speakers were Mr. Hatch, vice-president of the Provisional Government; Z. S. Spaulding, a large sugar-planter, who was, many years ago, U. S. consul here; Mr. W. R. Castle, a member of the advisory council; Hon. A. F. Judd, chief justice of the supreme court, and Mr. W. G. Smith. Mr. Smith is the editor of the *Hawaiian Star*, which holds very advanced views upon annexation and other political questions. I inclose an account of the meeting from the *Hawaiian Gazette*. The meeting quietly dispersed at 8:30 and there was no disorder of any kind.

On yesterday a protest against the use of force by the United States against their persons or property was presented to me by several gentlemen who, like the other 146 signers, still claim allegiance to our Government. One of the gentlemen, the secretary of the American League, claims to represent 150 members of that body. I inclose a printed copy of the protest. It may become necessary, hereafter, to reply to this protest, as many of its signers are officially connected with the Provisional Government.

On the morning of November 29 I received a letter from Hon. Sanford B. Dole, minister of foreign affairs, which letter I inclose, rescinding the privilege heretofore given to Admiral Skerrett, of landing his troops for drilling purposes. On Friday morning, December 1, I acknowledged the receipt of his letter and informed him that I had transmitted a copy of it to Admiral Irwin for his information and guidance.

In the afternoon of November 29 I received a second communication from Minister Dole, inquiring as to the authenticity of your letter to the President and the intentions of our Government in connection therewith. I inclose a copy of Mr. Dole's letter and of my answer. I should have stated that, on the morning when information of your letter was received, President Dole and Attorney-General Smith called upon me, to know what the United States intended to do. I explained to them my inability at present to comply with their request.

Since then active preparations for defense have been going on. The former palace, now known as the executive building, has been fortified by bags of sand, both in front and around the various porticos. Guns and pistols have been placed in the hands of all who are willing to take them, whether American, foreigners, or natives, and herein lies one of the greatest dangers. Many of those who have received

these weapons, like children with a new toy, are eager to use them; lacking in intelligence and self-restraint and having no property interests at stake, they are liable at any moment to break into mob violence. The Portuguese consul-general, a most intelligent and capable man, called here last night to express his great fears that many of his people would become involved in trouble and disaster, as they had been supplied with arms, and, against his protest, mustered into the volunteer service.

There are over 10,000 Portuguese on the islands of whom one-fourth are in Honolulu. There are over 1,000 in this city of military age. The nationality, however, which, in my judgment, is destined to give most anxiety here is the Japanese, and this because of their aspiration for suffrage. Mr. Irwin, a brother of Admiral Irwin, arrived here yesterday from Japan. He has for many years been the minister of this country at Japan, and negotiated most of the contracts now pending. He is here, he tells me, to protect these contracts. He reports the Emperor of Japan as unwilling to interfere with these islands because of the large interests of our Government. When the contract period is over, the Emperor thinks the Japanese should be accorded the right of suffrage, but admits the propriety of a high educational and property qualification. As there are now 22,000 Japanese here every intelligent observer concedes that this question of suffrage will soon be a very important one.

As to the Queen's safety I do not have any fear at present. There is a telephone in my sleeping room and I have authorized her people to call me up at any hour of the night or day. She also has the privilege, as stated in previous dispatches, of coming here or of going on one of our war vessels.

Aside from my communication with her, in regard to her safety, I have had nothing to say to the Queen or to her representatives since the interview reported in dispatch No. 3 of November 14. There have been various newspaper hints as to the fact of the interview, but none as to the subject-matter thereof. I have made further inquiries as to the Queen's understanding of the English tongue, and find that she is perfectly familiar with it, having been a classmate of Chief-Justice Judd and other prominent citizens.

I received your cipher telegram. My telegram to you was purposely indefinite and obscure, for reasons which you doubtless now understand. I send a cipher telegram to-day by the steamer *Oceanic* covering several of the points above set forth.

After a careful study of my instructions and of all the surroundings I felt it to be my duty to take no further step until I heard from you and the President.

With sentiments of profound regard, I am, etc.,

ALBERT S. WILLIS.

A GREAT MEETING.

The drill shed filled with enthusiastic men.—An immense throng turns out.—The people's voice is raised in indignant protest against Cleveland and Gresham.—Prominent men thrill a vast audience with their patriotic utterances, and show the fallacy of restoring monarchy.—Text of the speeches in full.

Enthusiasm, cheers, indignation at Gresham's late action, American patriotism, and men with their feelings strung up to the highest pitch of excitement, were the features of Saturday evening's mass meeting. Over 1,200 men were present, and not a dissenting voice among them; men who were not only ready and willing, but anxious to express their sentiments on the question now so near the hearts of all good Americans.

An immense crowd was expected and an immense crowd came. By 7:30 o'clock the hall was crowded and from that time till 8:30 many others came in. When the meeting was over the surging crowd of humanity quietly melted away, each one talking to his companion, whether friend or stranger, about the situation.

On one side of the hall a platform had been erected for the use of speakers. On it were seated Vice-President F. M. Hatch, Col. Z. S. Spalding, W. R. Castle, Chief Justice A. F. Judd, P. C. Jones, W. C. Wilder, and W. G. Smith.

F. M. Hatch, president of the Annexation Club, was the first speaker, and he opened the meeting with a rousing speech. He said:

FELLOW CITIZENS: You have been invited to meet to-night to consider our present political situation. We are confronted by the declaration of Secretary Gresham that royalty must be restored and our Government destroyed. A kind Providence has given us this opportunity to be heard before final action will be taken upon this issue. At present we are proceeding merely upon the newspaper reports which have been received here and which certainly we have a right to discuss. We do not know what action will be taken by the President or by Congress. Certainly any action taken by the Congress of the United States of America cannot be resisted by anybody in this community. Let us not be misunderstood or misrepresented by a hostile press; we do not meet here to-night to defy the power of the United States, that would be absurd, gentlemen, nor to villify those at present in charge of the Government of the United States. [Cries of "Hear! Hear!" and applause.]

But we meet with the hope that our words will be heard by Congress before action is taken by that body. There are certain features in the letter of Mr. Gresham to the President which show that he is proceeding upon a false assumption. Let us hope that the distinguished Secretary has been misinformed up to this date. It is certainly our prerogative to point out the false assumptions and to challenge them. Now, chief among those false assumptions is the one which seems to underlie the whole letter, that there has been submitted to the arbitration of the President of the United States the question whether or not we had a right to establish a government in this country. Gentlemen, I challenge that assumption. [Great applause, cheers, and cries of "you're right."] The assumption is false in every respect. [Cheers and applause.]

Let me briefly point out why. Two parties can make a contract, but it requires the consent of three to make a valid arbitration—that of the two parties in interest and the arbitrator. The parties must clearly define the subject-matter of the arbitration. It is absurd to contend that there could be any arbitration by inference or imputation. First, has there been any issue framed; has the Provisional Government submitted to the decision of anybody its right to exist? [Cries of "No!" "No!"] Not one word or one act can be produced in support of that contention. Gentlemen, from the nature of things, a government which started in revolution, though now the government *de jure* as well as *de facto*, could not submit the question of the legality of its existence to any arbitration because its right lay in its might. Having satisfied our consciences as to the justness of our cause we depend upon our might, and are answerable to no other power. [Applause.]

I brand as false the claim that we have put in issue the question whether or not we were proceeding legally or not in overturning a corrupt and rotten monarchy. [Great applause, cheers, and cries of "Hear!" "Hear!"] Second, has the President of the United States, up to this point, pretended to have been acting in a judicial capacity? I say his acts do not justify that assumption. An arbitrator or judge would not interfere with the existing status of the parties. The President of the United States immediately upon gaining his seat lowered the American flag and thereby changed the status of the parties. [Cries of "Hear!" "Hear!"] That was not the act of a judge, gentlemen. Again, has he notified anybody that he was proceeding with a judicial investigation? Has he given any notice that a hearing would be had on such a date? Has he notified anybody the witnesses were being examined? Has he given anybody an opportunity to cross-examine those witnesses or to confront them? Has he given anybody on our side an opportunity to cross-examine those witnesses or to confront them? Has he given anybody on our side the opportunity to be heard? [Cries of "no, no; he never has!"]

Now, we do not need the legal knowledge of that distinguished judge, who is now Secretary of State, to know that no arbitration could stand for a moment in law, however insignificant the matter, which was conducted *ex parte*, without an opportunity to be heard; without an inspection of the evidence which has been produced, or opportunity to cross-examine the witnesses. How was the late arbitration conducted in Paris? Did a number of gentlemen get together on the Bering Sea question and in private decide upon that matter? Did they send a private agent off to Bering Sea to look about and scratch the back of the seals [laughter], interview the neighbors and make a report? [Laughter, cheers, and applause.]

Gentlemen, it can hardly be contended that the Provisional Government and we representing the supporters of that Government have submitted our right to

exist to Col. James H. Blount, of Georgia. [Applause.] The President of the United States had the undoubted right, so far as we were concerned, to examine into the status here, the situation of the country, as bearing upon the question whether or not he should continue the negotiations of union pending when he took his seat as President. That was ostensibly the object for which Col. Blount was sent to these shores. We insist that up to this point there has been no judicial investigation in which both parties have been given the opportunity to be heard. [Applause.] And again, as showing conclusively the utter absurdity of the position that this has been an arbitration, could an arbitration of such a nature be possible when the Government of the United States had a treaty pending before it—between it and the power which it is charged was submitting its right to exist to the decision of one man? [Cries of "No, no!"]

We were a power *de facto* then; we were recognized by certain great powers of the world; which made us a power *de jure*, and we were a power having treaty relations with the United States of America. [Applause.] A treaty had been negotiated which bound the Executives of the two nations at the moment President Cleveland took his seat. That treaty awaited ratification to make it final, but it nevertheless was a treaty binding the Executive. Now, gentlemen, I challenge the right of the Chief Executive of that great nation, of his own mere motion, to undo the act of any of his predecessors. [Great applause.] Congress may do it; Congress has the full power; but Grover Cleveland has no more right, legally or morally, to undo the act of Benjamin Harrison than he had to undo any act of Abraham Lincoln. [Great applause and cheers.]

But waiving all those considerations, there remains this fundamental one, that no court of arbitration would have the right to ignore the great question at issue; that is, whether or not Liliuokalani had violated the constitution; had thrown it to the dogs, and had put herself beyond the pale and protection of the law. To ignore all that and decide this great issue upon the petty technicality as to whether or not Mr. Stevens recognized the power of this community five minutes too soon or not, was not in the power of a judge. [Great applause, and cries of "You're right."] I repeat, there has been no submission to arbitration. Let us, therefore, challenge all false assumptions, gentlemen, and let that challenge go on record. Let us hold the President to the true issue, and then if the legally constituted power of the United States, the power which has the right under the Constitution to declare war, overpowers us, we will go down with our colors flying, and with no misrepresentation possible. Let it be known to the world that if that event takes place it will be because the United States has exercised its power, but not its right. Let us hope that the showing we can make will have the effect upon Congress in shaping its course, and that it will also have its effect upon the distinguished Secretary of State and the Chief Executive of the American Nation. [Great applause.]

No. 203.

W. R. CASTLE.

W. R. Castle was the next speaker. His speech follows:

FELLOW-CITIZENS: We come here to-night to voice our indignant protest. [Cheers, and cries of "Hear! Hear!"] It is well, upon great occasions, for people to assemble and express their united voice, as this meeting to-night will speak. Great occasions demand great meetings like this. The history of the world gives us many memorable instances. The history of Hawaii has shown us that when a great occasion demanded, a public assembly was called, and the voice of that assembly has been listened to. When the arrogance of the monarch, Kalakaua, became too great, the mass meeting of 1887 met, and its voice was heard, and the Monarch yielded.

That monarch proved false. His successor has followed in the same footsteps. The people have been patient; we have waited, we have hoped for better things; but when the attempt was made to sweep our rights from under our feet, to take away the liberties of the subject, the result was the mass meeting of January 16, 1893, and the voice of that meeting, as expressed, resulted in the downfall of the monarchy and in the establishment of the Provisional Government. [Cheers.] The Provisional Government, gentlemen, represents you, and no one else. [Applause.] As it was said by one of the leading men of the United States recently, a few people went on the ships in Boston harbor and threw some tea overboard. Had the question been submitted to the people of the colonies at that time: "Shall the colonies separate from Great Britain?" a great majority of the people of the united colonies would have said no. They were afraid to step in the dark.

I believe the same is true here. We know that the native population of Hawaii was afraid of what seems to them one step in the dark; but the time will come when they will thank God that there were people willing to risk their lives, their property, their all to establish in Hawaii true liberty. [Great applause and cheers.]

Fellow citizens, Hawaii tends towards one goal and only one; that is, union with its mother across the water. [Great applause.]

If to-day the progress of Hawaii is arrested, is delayed, it is simply delay for a short time. We shall go on, and the time will come, and most of us here will see that time, when Hawaii will rest secure in the bosom of its great and good mother. [Cries of "Hear!" cheers and applause.] In olden times there was a man whose wisdom led him to declare that the world was round; that the world went round the sun; that the stars revolved in their courses, and he was met by the mighty power of the Roman Catholic Church, which declared that he was wrong. Gentlemen, did that make any difference with the facts; did that make any delay in the revolving of the spheres? Can Secretary Gresham stop the onward progress of Hawaii? [Cries of "Never!" and applause.] You sent a commission to Washington to ask that Hawaii might be admitted to the Union.

What was the response of the great heart of that people when we went there? The people welcomed us with a thrill throughout the country from one end to the other. [Applause.] And we went on and were welcomed in Washington. But our enemies, of course, have been alert—they have filled the ears of the present administration in Washington with falsehood; they have stuffed the ears of Secretary Gresham, perhaps of the President, with lies as to what is taking place here. Do they know the facts? We are bound to believe that Secretary Gresham and the President of the United States are trying to execute justice; are trying to do what is right. Whether they are doing it, we know, not they. [Cries of "Hear! Hear!" and applause.] They do not know what the facts are, but we do know, and now it is proposed to take away from us the liberty which we have gained. [Cries of "No! No! They never will do it."]

It is proposed to restore the tottering throne, the monarchy of Hawaii. [Cries of "They can't do it! Never!"] Who proposed to do that? The people of the United States? [Cries of "No! No!"] It is proposed by Secretary Gresham; it is proposed by the President; but the people have spoken. What has been their voice? The people of the United States have, with one accord, voiced our sentiments in favor of liberty. Gentlemen, after the remarks of the president of the Annexation Club it is perhaps unnecessary to dilate any further on the constitutionality of the proposed proceeding of the President of the United States.

In all my reading I fail to find anywhere that the President of the United States is authorized to begin a war, and this proposition to restore the Queen to the throne of Hawaii, if carried out, will be an act of war. Then let us stand firm in our right, and if such a step is taken let him be impeached before the Senate of his country. [Cheers and applause.] Let me call your attention to just one specimen of truthfulness in that report. Mr. Gresham tells the President that the people of Hawaii dare not rise to overthrow the present Government, because they will meet the armed forces of the United States. The President of the United States sent out here his commissioner, his "paramount commissioner" [laughter], and the first act of that commissioner was to take down the American flag. Then he stood by to see us tumble.

Well, gentlemen, we didn't tumble worth a cent. [Laughter.] That taking down of the flag was an invitation, and it was so understood by the people of this country, to overturn the best government this country ever had. [Cries of "Hear, hear!" and "It didn't do it!"] The paramount commissioner waited to see the result, and no such result following, thereupon issued his proclamation, and again invited the people to overthrow this Government. Was not the fact of the flag being taken down known to Secretary Gresham? Has not the proclamation that Commissioner Blount issued in Honolulu, inviting rebellion, inviting the overthrow of this Government, threatening the dire vengeance of the United States upon any and all Americans who assisted us—has not that been published broadcast from one end of the United States to another? Has not Secretary Gresham read that proclamation until he knows it by heart?

The second invitation by the commissioner of the United States to overturn the Government failed in its object, and now the Secretary of the United States blinded, I believe, by false information, again proposes to overturn the Government established by the people of this country. [Cries of "Never!" "He won't do it!"] He proposes to take that position and assumes that the people of this country will not oppose it. [Cries of "He can't do it!"]

Gentlemen, the time is coming when we will see that glorious flag, that emblem of the truest liberty the world knows, floating over our heads—the flag of this country. [Great applause and cheers, and a voice in the crowd shouted: "What is the matter with putting it up there now and keeping it there?"] Gentlemen, the people of the United States wish to hear our voice, they wish to hear what we have to say upon this subject, and I hope that the next vessel that goes to the coast will bear an unmistakable voice from us to-night. At the request of the president of this association, I will now offer the following resolution, which I hope will be adopted without one dissenting voice:

Resolution.

Resolved, That we have read with surprise and regret the recommendation of the Secretary of State of the United States to the President, to restore the monarchy lately existing in Hawaii.

Resolved, That we condemn the assumption of the Secretary that the right of the Provisional Government to exist was terminated by his refusal to re-submit to the Senate the treaty of Union pending between the two countries; and also his assumption that the Provisional Government had at that very time submitted the question of its continued existence to the arbitrament of the President or of any other power.

Resolved, That we support to the best of our ability the Provisional Government, in resisting any attack upon it which may be made contrary to the usage of nations.

Z. S. SPALDING.

Mr. Castle was followed by Col. Z. S. Spalding, the speaker of the evening. His remarks were interrupted many times by cheers and applause. He said:

FELLOW CITIZENS: The State Department at Washington having recently made public some of the ancient history of these islands, in which they did me honor of proving my being "an annexationist" as far back as 1868. [Cries of "Good boy!" and cheers.] I feel that I am entitled to attend this meeting. [Cries of "Hear, hear!"] And I also feel that it was no matter to be ashamed of at that date, when I had the honor of being the representative of the great American Republic at these Islands, it is still less my desire now to repudiate those sentiments or falter in my allegiance to the doctrine so ably upheld by, and so intimately connected with the names of Webster, Seward, and Blaine. [Great applause.]

I have great respect for the honorable gentleman who now holds the portfolio of the State Department at Washington. He and I wore two humble units in the great mass of loyal men who helped to save the integrity of the Union in the dark days of the civil war. [Cries of "hear, hear."] I can forgive almost any weakness in the judgment of a man whose heart and hand were on the right side in that bloody strife, but I confess it requires a good deal of charity to overlook the proposition that the same spirit which in 1861 animated the defenders of that Christian civilization and advancement, by means of which the United States have outstripped the world, shall now take a back seat or march to the rear, and leave the work of nearly a century of devoted hearts and willing hands in the enlightenment of this people and the improvement of this country to be destroyed by the ruthless hand of superstition and ignorance. [Cheers and applause.]

It is not my intention to measure swords with the honorable Secretary in the discussion of facts relating to the establishment of the present Government. That it was established and has since been maintained in the interests of the whole country and for the purpose of giving the whole people the benefit of an honest and able administration of its affairs is, in my opinion, beyond dispute. I publicly declare that the newspaper statement attributed to Claus Spreckels, to the effect that "under the management of the Revolutionary Government business on the islands has become depressed * * * and would have continued to diminish as long as the Government had existed," etc., is not borne out by the facts. [Applause.]

If Mr. Spreckels's plantations have not been more remunerative during the past year than for any year since the passage of the McKinley bill it has been on account of the dry weather, and not from any fault of the Provisional Government. [Laughter and applause.] Mr. Jaeger is credited with saying for publication, "the Provisional Government has little to commend it. It could not long endure if left to itself." Such statements would have little effect were the parties uttering them known to the people who read their utterances. [Laughter.] I have lived in this country quite as long as Mr. Jaeger, and I challenge any man to name a cabinet during the last twenty-five years the members of which were the superiors, if indeed the equals, of the men who now hold the various offices under the Provisional Government. [Cheers and applause.]

Now, why are we annexationists? I quite agree with my friend, Mr. Spreckels, that under the conditions he names and fears my business as a sugar-planter would not be benefited by having this country come under the laws and restrictions of the United States regarding Chinese and other labor. [Laughter.] If I owned the whole country, and belonged to the sugar trust, I think it very likely I would not want to be annexed. [Laughter.] But, here again, as I am only a unit, and as I believe the future welfare of the country would be better assured by annexation, I am willing to take my chances under the Stars and Stripes, especially as I believe such union would prove a benefit to the country from which we on these islands have drawn all our support. [Great applause.]

We are here this evening to consider the publication of the views of the Secretary

of State, at Washington, and perhaps decide the question as to whether or not we shall give up the idea of annexation. [Cries of "no, no, never."] If the opinion expressed by the honorable Secretary of State could be considered as the voice of the people of the United States, I should advise that we save our breath to cool our porridge. But from the somewhat forcible opposition expressed by the press and public, I am led to believe that the Secretary found the snow coming down the side of the mountain very rapidly after his letter was made public. [Laughter and applause.] Therefore, I am forced to give my opinion that it would be unwise and unadvisable to give up the fight before the back countries are heard from. [Here a voice in the crowd shouted: "Let us give up our guns hot, and cartridge belts empty." Cheers and applause.]

Here I must beg your indulgence for a personal explanation. Secretary Gresham says in his letter: "Mr. Blount states that while in Honolulu he did not meet a single annexationist who expressed his willingness to submit the question to a vote of the people; he did not talk with one on that subject who did not insist that if the islands were annexed suffrage should be so restricted as to give a complete control to the foreigners or whites, while representative annexationists have repeatedly made similar statements to the undersigned." I had the honor, while in Washington, of an interview with the honorable Secretary, and was asked by him to give my views upon the matter quoted. My reply was, that while I did not consider it proper to submit the terms of a treaty to the people before the treaty was made in Hawaii any more than in the United States, I was, and am perfectly willing to say that under the Constitution and laws of the United States, and especially under such restrictions as the representatives of the United States Government might themselves see fit to make, I would allow every native voter with the ordinary qualifications to vote at any and every election to be held. [Applause.]

I may not have been classed with the "representative annexationists" by the honorable Secretary, but as I had been called upon and had given him my opinion, I object to his wholesale denunciation of "annexationists" under the charge that they would rob the natives of any rights natural to them under the circumstances. [Cries of "Hear, hear!" and "Good boy!"] When the time comes for reestablishment of the right of suffrage in this country the native population may depend upon the annexationists to demand for them the privileges of republican citizenship as fully certainly as granted through the great political party to which the honorable Secretary belongs by the grand old State of Mississippi to its citizens. [Laughter and applause.]

I further object to the position taken by the honorable Secretary in the assumption of the right on the part of the President of the United States to arbitrate between the present Government of these islands and any party whomsoever without being specially invited to such arbitration by this Government. [Cries of "Hear!" "Hear!"] And I heartily concur with the resolution you have passed denouncing the assumption by the Secretary of State at Washington, if we are right in our interpretation of the language ascribed to him, that the Provisional Government of Hawaii, or its powers, terminated with his advice to the President—that the treaty of annexation be not returned to the Senate. [Applause.] The Provisional Government was created (to use the Secretary's own words) "To exist until the terms of the union with the United States have been negotiated and agreed upon." So far, the two Governments have fully "negotiated" the terms of union, but no official agreement has been reached. When either party gives notice to the other of failure to agree, it will be, I think, time enough for the Provisional Government to decide whether such failure is positive and complete, or only temporary, and to act as may seem best for the interests of the people it serves. [Cries of "Hear!" "Hear!" and applause.]

At present I can not accept the opinion expressed by the honorable Secretary of State as the decision or will of the people of that great Republic which for nearly a century has fostered the growth upon these islands of an American sentiment that to-day, in its devotion to the stars and stripes, may challenge the loyalty of even the honorable Secretary himself. [Cheers and applause.] Hawaii is the one spot in all the world outside the strict boundaries of the United States where "Americanism" has grown and flourished even under the blighting influences of an effete monarchy. [Great applause.]

Do you ask how this has been accomplished? I answer, through the kindly influences of that great Republic which has been to these islands a "creator bounteous and benign." By the example and precepts of her missionaries she has let in the light of Christianity where all was dark before. By the sunshine of her favors and the rainfall of her financial benefits to us she has enabled us to change the barren hillsides into productive fields and add largely to the food supply of her people. [Applause.] We, in return, have consumed many of her products, and there has arisen an exchange of commodities between the two countries of mutual benefit. That this would go on under a more perfect union I can not doubt; nor

can I doubt that the interchange would be more generally beneficial than under the monarchical form of government advocated by my friend and naturalized fellow-countryman, who has so strongly expressed himself against this Government.

That the good people of the United States will refuse the admission of Hawaii, under proper regulations, and thus add another star to the galaxy which leads the van in the advance of civilization throughout the world, I can not doubt. [Cheers.] But we must show our right to march in that front rank of civilization, and therefore it behooves us to guard well the structure that has been established, and not to allow its fair fame to be sullied by acts unworthy of the cause in which it was raised. [Cheers and applause.] We believe that the present Government represents the best elements of this country. Let us so show it to the world. [Great applause.]

Mr. HATCH. Gentlemen, I believe that no opportunity should be lost to reiterate the announcement that we have no quarrel with the Hawaiian people, our quarrel is with the Hawaiian monarchy. In this connection I will introduce Chief Justice Judd.

CHIEF-JUSTICE JUDD.

Chief-Justice A. F. Judd followed with the following:

FELLOW CITIZENS: I am glad to be with you this evening. [Cries of "Hear!" "Hear!"] During the last twenty years I have attended but one political meeting before this to-night, and that was in the old Bethel, in 1881. I took a back seat at that time when a few citizens assembled together there to protest against the appointment of Celso C sar Moreno as minister of foreign affairs of this then kingdom. [Applause.] I come before you and wish to say something because I am a Hawaiian. My father came to this country in 1828. I was born here and received the larger part of my education here. I am a Hawaiian by birth, but an American in blood. [Cries of "Hear!" "Hear!" and applause.] My ancestors date back to 1634, when the first Judd came from England and settled in America. I am proud of that ancestry, and I am proud of the fact that I was born in this country. I love this country. It is my country, and it is the "garden of the gods." [Applause.]

My father devoted his life to this country and I have, thus far, conscientiously to the best interests of the Hawaiian people. [Cries of "Hear!" "Hear!"] And I challenge anyone to say that any act of mine has been knowingly done against the best interests of this country. [Applause.] And if the Queen, the classmate and friend of my early years, had listened to the advice of the justices of the supreme court she would not be where she is over there, but she would still be in the building over yonder. [The palace.] I was loyal to the monarchy and supported the autonomy of this country, and I believed, up to the 14th of January, that it was possible to maintain our independence as a Kingdom. But, gentlemen, I spent from 12 o'clock noon until 4 o'clock in the afternoon in that palace and the events which took place there converted me and made me feel that it was impossible that that state of things could continue any longer. [Applause.]

What was attempted on that day? Was it not to promulgate by force a constitution that would have destroyed the independence of the supreme court? What has been the bulwark of this country? I speak humbly; not for myself, but for my associates and predecessors. Has it not been a court that has sustained the law and the constitution and the rights of the people; an independent judiciary appointed for life, subject only to impeachment? And the constitution that was proposed on the 14th of January, was to make the term of office six years, and the salaries dependent upon such legislature as this last one. Could any white man take the commission under such conditions? Not if his name was Judd. [Applause.] This is not a political meeting. If it were a partisan, political meeting, I should have more respect for the office that I have held for nearly twenty years and stayed away. I was the last person that Col. Blount sought an interview with, and wish to say publicly that not one question did he address to me as to my views with regard to whether the revolution of January 17 was accomplished by the aid of Minister Stevens and the troops of the *Boston*. That subject he did not touch upon. [Cries of "He didn't want to touch upon it!"]

I believe, gentlemen, that it was that mass meeting held in the old armory that settled the question, was it not? [Applause.] And this mass meeting, gentlemen, settles the question that we shall be true and resolute and support the present Government, which is, as brother Hatch has called it, not only the Government *de facto*, but as it has lasted nearly a year, and received the recognition of all the great powers of the world, it is the Government *de jure*. I have sworn to support it, I intend to support it, and, gentlemen, I will only say one thing more, that we will all have to hang together or hang separately. [Laughter and applause.]

W. G. SMITH.

W. G. Smith, editor of the Star, spoke as follows:

FELLOW-CITIZENS: If I have any apology to-night for speaking in this distinguished presence, it is that I am a newcomer to these islands. But I think I may atone for that by standing elbow to elbow to you in any trouble that may come to us [cries of "Hear!" "Hear!" and applause], and in encouraging every man newly arrived on this soil to defend the institutions which you have founded, and help preserve the liberty which you have won. [Applause.] This meeting to-night, in a smaller way, must remind us of those meetings which stirred the blood of Boston and the heart of Philadelphia in the last quarter of the previous century. Then, as now, men were met together to band themselves against a despotism. [Cries of "Hear!" "Hear!" and applause.]

Then, as now, they were met to protest to the mother country that she should not betray and outrage her sons. [Applause.] Then, as now, they were met to pledge their lives, their fortunes, and their sacred honor in the cause of liberty. [Applause.] It can not be, fellow-citizens, that any man inheriting a drop of that patriotic blood, with any strain of it in his veins, could want to-day to take the place of old King George and coerce the men of his own flesh, of his own flag, and of his own speech because they are Americans enough not to bow down before a throne. [Great applause and cheers.] I do not believe, fellow-citizens, that any man who has taken that position has a right to Revolutionary sires; but I thank God that there are Americans who have spoken since the infamies of Gresham who have patriot blood and ancestry; and I thank God again that if they get the opportunity to speak in the way they would they will be heard in the earthquake voice of majorities like those of Pennsylvania and New York. [Great applause.]

Fellow-citizens, we are few, but it was said of old that one with God is a majority; and surely that cause which has Christian civilization on its side, which stands for Christianity and morality as well as liberty, will have Almighty aid. [Applause.] I say, gentlemen, we are few. Some of us are Hawaiians of American descent; some of us are Americans by birth, inheritors of Lexington and Concord [cries of "Hear!" "Hear!"]; some of us are Germans, whose sturdy manliness was never known to compromise with an enemy in arms [applause]; some of us are British by birth and inherit, perhaps, the British love of constitutional liberty, not overawed by respect to thrones; some, again, are of Latin blood, and among them centuries of subject life has not quenched the spark of democratic aspiration [applause]; but though we are of many bloods, yet we are of one mind [great applause], and that one mind means loyalty to the Provisional Government no less in its hour of peril than in its hour of apparent triumph. [Great applause.]

If we are dispossessed, I take it that it must be by the armed forces of the United States, illegally and unconstitutionally ordered for a coercive purpose and triumphing over such legal as well as patriotic opposition as our policy may see fit to put in line. Let us have hope and faith that if this outrage comes to us the time will be when the United States, in truer, wiser, and more patriotic hands, will undo the wrong and repair the infamy. [Cries of "Hear, hear!" and applause.] I want to say in closing that it is our duty, forgetting all past dissensions and minor differences, to close in solid ranks about the Provisional Government. [Great applause.] We need to do this for two reasons: One, to suppress all domestic insurrection with a hand of iron, and the other, to compel Mr. Cleveland, if he intends to follow out the course so far outlined, to do it by a violation of the Constitution, which confers the act of war upon Congress alone, and thus expose himself to merited impeachment. [Great applause.]

We can not fire upon the American flag nor upon the men in blue, our brothers and our countrymen, but we can so resist the progress of the American troops as to make their capture of this Government by President Cleveland's orders an infraction of the Constitution. [Great applause.] And that, fellow citizens, I believe we have the power to do, and not only the power to do, but the willingness to do. [Great and continued applause.] Here some one in the crowd called for three cheers for Mr. Smith, which were given with a will.

P. C. JONES.

P. C. Jones was the last speaker. He said:

Grover Cleveland has been heard from. [Laughter.] The American people are being heard from. [Laughter.] The next Congress is yet to be heard from. [Laughter and applause.] I think that Grover Cleveland in completing his plan to restore the monarchy here should have done one more thing, and that is, he should have issued an order that all four of the original members of the executive council of the Provisional Government should be shot on the day of the restoration. (Laughter.)

That in itself would have rounded out the whole scheme and would have afforded a great deal of pleasure to some royalists. [Laughter.]

Our motto you know, is "Liberty or death" [great applause] with, as the fellow said, a very strong preference for the former, [Laughter.] In thinking over the question, fellow-citizens, there is one thing that comes to me very clearly, and that is, our duty at this time to the Provisional Government [cries of "Stick to it!"] is to stand by it and support the executive. They are the men who are bearing the brunt and the burden and the strain of the day. [Applause.] We must help them with our arms, with our hands, with our tongues, with our prayers, and with every instrument that we can serve them with. We should help them. [Cries of "We will."] They are good men and true. I think the time has been taken up with speeches and I must be very brief, fellow-citizens. In 1884 when Grover Cleveland was first chosen President of the United States it was said that he obtained his election by three R's, Rum, Romanism, and Rebellion. You all know the story, and it is unnecessary for me to tell it to you.

To-day, fellow-citizens, Grover Cleveland stands impeached before the American colony of Hawaii by three R's, and I hope that very soon the U. S. Congress will also impeach him unless he retracts. [Cheers and applause.] Now those three R's are the Restoration of a Rotten Royalty. [Laughter and applause.] But, fellow-citizens, we are not alone in condemning this; there are sixty million of our countrymen in our own country backing us up. [Cheers.] And I furthermore believe, fellow-citizens, that God Almighty is with us. [Cheers.] I believe that on the 17th of January He was with us, and I believe He has been with us ever since; and in His own time and in His own way He will let us out into a large place. And so I say let us thank God, and take courage. [Cheers and applause.]

This ended the speeches for the evening. Mr. Hatch again read the resolution, and asked all those in favor of it to signify it. A mighty "aye," that almost shook the building, went up. The contrary minded were then called for, and death-like stillness was the result.

Some one called for three cheers for the Provisional Government, and they were given with a will, and, with a last tiger. The meeting broke up, and one of the most enthusiastic, as well as one of the largest assemblages Honolulu has ever witnessed was over.

[Inclosure 2.]

CITIZENS' PROTEST.

Minister Willis addressed by the people.—He is reminded that interference by his Government will be an act of war.—Full text of the protest.

HONOLULU, HAWAIIAN ISLANDS, December 1, 1893.

His Excellency ALBERT S. WILLIS,
*Envoy Extraordinary and Minister Plenipotentiary
of the United States of America:*

SIR: The undersigned, American residents of Honolulu, in the Island of Oahu, one of the Hawaiian Islands, respectfully represent to your excellency that they are citizens of the United States of America and have done nothing whereby to forfeit or waive their full legal and constitutional rights as such citizens.

That the undersigned made their residences and homes and acquired and owned property in the Hawaiian Islands, relying on the rights secured and guaranteed by the Hawaiian constitutions of 1852 and of 1865, which rights were confirmed and enlarged by the constitution of 1887.

That on the 14th day of January last the undersigned learned that it was the determination of Liliuokalani, then Hawaiian sovereign, to disregard and annul the rights of life, liberty, and property guaranteed, secured, confirmed and enlarged by the said Hawaiian constitutions, and that she publicly proclaimed her determination to repudiate the obligations imposed upon her by virtue of her oath of office as such sovereign to support and maintain the Constitution of the Hawaiian Islands, and publicly announced her intention to govern this country pursuant to her arbitrary, despotic will, to be proclaimed by a public manifesto which she called a new constitution.

That a meeting of many citizens of Honolulu was held upon the afternoon of said day, which was attended by John F. Colburn, then minister of the interior, and Arthur P. Peterson, then attorney-general, by whom it was then publicly stated that such was the determination and intention of said Liliuokalani, and that, if assisted by the citizens, they would oppose the same.

That on said 14th day of January the then legally constituted authorities of the Hawaiian Islands were undoubtedly and avowedly incapable of controlling the elements of the anarchy which was proclaimed and intended by said Liliuokalani, or of preventing impending mob violence, or of keeping the public peace.

That in consequence and by reason of the premises a committee of public safety was chosen at said meeting and on the following Monday, at a mass meeting of the citizens of Honolulu, the said committee was authorized to take measures requisite for the public safety; that, in conformity therewith, on the 17th day of said January the present Government of the Hawaiian Islands was established and proclaimed, and has since governed and controlled the Hawaiian Islands, having been recognized by all foreign representatives in Honolulu, and having diplomatic and consular representatives abroad, especially in the United States of America, who have been and still are recognized and treated as the only accredited representatives of the said Government.

That a treaty of annexation was negotiated with said Government by and in behalf of the U. S. Government, and that no public notice has been given to the undersigned of any intention on the part of the U. S. Government to break off diplomatic relations with the Provisional Government of the Hawaiian Islands, or to do any acts of war or hostility to the said Government.

That no such acts of war or hostility can now be done without endangering the lives and property of the undersigned, and of their families, relatives, and friends in the Hawaiian Islands.

That owing to the insular situation of this country there would be no opportunity for the undersigned to take such steps and do such things as would secure the safety of the lives of themselves, their wives and children, and of their property in case of such acts of war or hostility.

And the undersigned hereby solemnly and respectfully protest to your excellency, and to Grover Cleveland, President of the United States, and to Walter Q. Gresham, Secretary of State, and to Hilary A. Herbert, Secretary of the Navy, and to Rear-Admiral John Irwin, commanding the United States naval forces now in the waters of the Hawaiian Islands, and to all others concerned, that any such acts of war or hostility if taken, attempted, or announced in the time of profound peace now existing between the United States and the Hawaiian Islands, or without any full, formal, and timely announcement thereof, will and would cause all concerned in authorizing the same to be held responsible for all the consequences that may ensue therefrom, not only before Almighty God and in the form of conscience, but by all sanctioned rules and observances of civilized nations in their dealing with each other, and will and would be in violation of the rights of the undersigned, secured and belonging to them as citizens of the United States of America.

We have the honor to be, very respectfully, your obedient servants and fellow-citizens.

[Inclosure No. 3.]

Mr. Dole to Mr. Willis.

DEPARTMENT OF FOREIGN AFFAIRS,
Honolulu, Hawaiian Islands, November 29, 1893.

SIR: On the 7th of August last permission was given by the Government, through the office of the American legation, to Rear-Admiral J. S. Skerrett, commanding U. S. naval force, Pacific Station, at his request to land the crews of the ships under his command for battalion drill when desired.

The Government now wishes to rescind the said privilege in its indefinite character and to return to the former practice under which a request was made at each occasion when the privilege of landing men under arms was desired.

I have the honor to request that this modification of the present arrangement be transmitted through your office to Rear-Admiral Irwin, commanding U. S. naval force, Pacific Station.

With sentiments of the highest consideration and esteem.

I have, etc.,

SANFORD B. DOLE,
Minister of Foreign Affairs.

[Inclosure No. 4.]

*Mr. Dole to Mr. Willis.*DEPARTMENT OF FOREIGN AFFAIRS,
Honolulu, Hawaiian Islands, November 29, 1893.

SIR: Having received from our minister at Washington, Hon. Lorin A. Thurston, accredited to the Government of the United States of America, information of an official letter from Secretary of State, Hon. Walter Q. Gresham, to President Cleveland, which is of an unfriendly nature toward this Government, recommending hostile action by the President towards us, alleged copies of which letter have been published in the American press, I desire to inquire of you whether the published reports of such letter of Secretary Gresham are substantially correct? If they are, I feel that it is due this Government that it should be informed of the intentions of your Government in relation to the suggestions contained in the said letter of Mr. Gresham.

Accept the assurance of the profound consideration and high esteem with which I have, etc.,

SANFORD B. DOLE,
Minister of Foreign Affairs.

[Inclosure 5.]

*Mr. Willis to Mr. Dole.*LEGATION OF THE UNITED STATES,
Honolulu, December 2, 1893.

SIR: I have the honor to acknowledge the receipt of your note of the 29th ultimo inquiring as to the authenticity of a letter of Hon. W. Q. Gresham, Secretary of State, upon the Hawaiian question, and stating that if the "published reports of such letter are substantially correct" you "feel that it is due this (your) Government that it should be informed of the intentions of your (my) Government in relation to the suggestions contained in the said letter of Mr. Gresham."

As to the letter of Mr. Gresham, I have the honor to call your attention to the fact, as shown by you, that it is a communication from a member of the Cabinet to the President of the United States, and, being a domestic transaction, is not the subject of diplomatic representation.

Answering your note further I must express my sincere regret that it is not in my power at present to inform you of the views or intentions of the United States. The President earnestly desires a speedy settlement of your troubles, and will, in my opinion, be ready to make known his purposes as soon as he is informed of certain matters recently submitted to him.

With high regard, I am, etc.,

ALBERT S. WILLIS.

Mr. Willis to Mr. Gresham.

No. 9.]

DECEMBER 5, 1893.

In this dispatch Mr. Willis speaks solely of the difficulty experienced in translating the naval cipher which he is obliged to use and suggests that he be furnished with a simpler code.

[Confidential.]

Mr. Willis to Mr. Gresham.

No. 10.]

LEGATION OF THE UNITED STATES,
Honolulu, Hawaiian Islands, December 9, 1893. (Received—.)

SIR: On the morning of December 5 C. B. Wilson, who was the marshal of the Queen at the time of her dethronement, called upon me.

I asked him what business he was now in. He said he was doing nothing; he was "awaiting results." I asked: "What results?" He said: "The restoration of the Queen." I asked him where he got any such information. He said: "Nowhere," but he hoped for it. I then turned the conversation to other subjects.

As he was leaving he drew from his pocket a document and gave it to me, saying that he did not know whether it was proper or not and left.

Upon examining the paper I found that it was a detailed "method of procedure" upon the restoration of the Queen, a copy of which I inclose.

I endeavored to have him call on the same afternoon, but he could not be found. On the following morning Mr. Mills, whom I asked to find him, saw him at about 10 o'clock, and he said he would come immediately to see me and started toward the legation. He did not reach here for half an hour. My opinion is that he consulted several parties before coming here.

Upon reaching the legation an interview followed, a copy of which I inclose.

It will be seen that although claiming to be the author of the document, a claim which is doubtful, he finally admitted that it had been submitted to and approved by the Queen, by her attorney, and by all the members of her former ministry, all of whom had received copies.

An analysis of the list of special advisers, whether native or foreign, is not encouraging to the friends of good government or of American interests. The Americans who for over half a century held a commanding place in the councils of state, are ignored, and other nationalities, English especially, are placed in charge. This is true both of the special list of advisers and of the supplementary list. If these lists had been selected by Wilson himself, no special importance would attach to them, but it would seem from the facts that it is a list which has been approved after consultation with leading royalists and most probably with the approval of the Queen.

With high regard I am, etc.,

ALBERT S. WILLIS.

[Inclosure 1 in No. 10.]

PROPOSED COURSE OF PROCEDURE.

Immediately on receiving information officially or otherwise that Her Majesty the Queen, with Her Government as of the 17th day of January, 1893, is to be restored to its former prestige as the permanent Government of the Hawaiian Islands, Her Majesty's Cabinet as of said date will at once call a cabinet meeting for the purpose of considering on and preparing a course of action to be pursued under the circumstances, and adopting such course as will be the best means of securing protection to Her Majesty and Her Government, and the security of life and property generally to the residents of the Kingdom, and the perfect maintenance of law and order throughout the Islands, together with such other matters incident to the restoration as Her Majesty's Cabinet may deem necessary and advisable, so that the laws of the Kingdom may and can be constitutionally enforced, and all unnecessary bloodshed and loss of life through possible fanatical opposition be avoided.

Those possible events should be provided for by the discussion of matters of such a complicated nature and of such far-reaching consequences, in a calm and sober way, prior to the event. None but the best results may be looked for, and if carefully and calmly reasoned out the highest success should be the result; while if left to the last moment for discussion and action, hasty conclusions may bring disappointment, failure, and possibly even serious disaster.

After Her Majesty's cabinet have decided upon a plan and course of procedure they shall invite to their counsels, in a body, the following list of tried and trusty

friends of the monarchy and nation, to act with as advisers and assistants on all matters taking place during the restoration of Her Majesty and her Government to the standing from which they were so unjustly forced until the natural order and tranquillity of former times shall be once more established, and Her Majesty's Government be once more recognized as the lawful and regular Government of the Hawaiian people.

These persons named as advisers and assistants will meet with the cabinet for the purpose of considering, suggesting, and amending, if necessary, and finally approving and adopting the plans laid before them by the cabinet for the attainment of the previously-mentioned objects. After final action by the united meeting the cabinet will at once proceed to lay the result before Her Majesty for her approval, the advisers and assistants meanwhile remaining assembled, to await the return of Her Majesty's cabinet after their meeting with Her Majesty. On their return they shall report the result of their conference with Her Majesty to the meeting, and the joint meeting will then consider and approve it. Upon which, having by vote placed the execution of the approved plans in the hands of the executive, the meeting will adjourn subject to call by the cabinet, they in the meantime to place themselves individually in its hands for orders or for counsel as the executive may require or direct.

The preceding propositions are made in the event of the United States Government, through its officials, causing and compelling the Provisional Government to surrender unconditionally and proceeding to the restoration of Her Majesty's Government as it was on the 17th day of January, 1893, possibly coupled with a request or a recommendation to mercy and leniency on behalf of those who took part as principals in the overthrow of the Queen's Government on that date.

In the event of such restoration taking place in order that the details may be properly attended to, and that an assurance may be given that law and order will be maintained, and that the Constitutional Government of Her Majesty Queen Liliuokalani be once more established on an assured basis, the following important details must be carried out while at the same time having due regard to all recommendations of leniency made by the United States Government.

(If it does not conflict with their instructions from their home Government, the U. S. commander in chief should be requested by Her Majesty's Government to bring and keep his forces on shore, in quarters to be provided for them, till Her Majesty's Government has been fully reorganized and feels itself in a proper condition to maintain law and order; and also, if not in conflict with his instructions from home, that he be asked by Her Majesty's Government to direct that the place and hour of surrender by the Provisional Government and its forces to him and his forces be at 10 o'clock a. m. on _____, the _____ day of _____, 1893, at Palace Square, where they will deliver up to him the possession of the Government and its buildings and archives, and hand over to him all the arms and munitions of war delivered up to them on the 17th day of January, 1893, by Her Majesty's Government, and all other since obtained by them or which have been in their possession since, and surrender all their officers and men to him as prisoners to be subsequently turned over to Her Majesty's Government, to be dealt with by a court specially appointed for that purpose; also the turning over of Government arms and munitions of war, prisoners, etc., by the United States Government to Her Majesty's Government.)

Detail for Consideration and Adoption.

I. Proclamation by the Queen's Government of their reassumption of the control of the Government of the Hawaiian Islands.

II. Appointment of Commander-in-Chief and staff.

III. Proclamation of Martial Law and the suspension of the Writ of Habeas Corpus.

IV. Calling on all loyal citizens and well-wishers of the Government to register their names for service at _____ office; Enrollment of Volunteers.

V. Surrender of all arms and ammunition in private hands, and the prohibition of all sale and transfer of arms and ammunition other than by direction of the Commander-in-Chief.

VI. Taking possession of all Government Buildings and other places necessary by the Queen's forces and placing guards therein.

VII. Proclamation prohibiting the departure of coasting vessels or other vessels to the other Islands.

VIII. Reappointment of all officials and the filling of vacancies.

IX. Arrest of all persons implicated or concerned in the late overthrow.

X. Custody and care of all prisoners made under authority of the above paragraph and those handed over by the U. S. forces.

XI. Receiving of all arms and munitions of war and other Government property surrendered to U. S. forces by the P. G. forces.

XII. Despatch vessels to the other Islands to proclaim the Queen's Government and make all necessary changes and arrests.

We hereby certify that the above thirteen (13) pages have this day been compared with the original type-written four (4) pages and are an exact copy both in words and punctuation.

Witness our hands this 5 Dec., 1893 at 2.30 p. m.

ALBERT S. WILLIS,
E. E. & M. P., U. S. A.
ELLIS MILLS,
Consul General of the U. S.

[Inclosure 2 in No. 10.]

Q. In the paper you left with me yesterday mention is made of certain parties to be invited to your council. You did not give any list.—A. I have the list in my pocket.

Q. Did you intend to leave it with me the other day?—A. No.

Q. Have you any objection to my reading it?—A. No.

(Reading:) Prince David, Prince Cupid, S. Parker, C. P. Jankia, J. H. Boyd.

Q. Who is J. H. Boyd?—A. Clerk in the Interior Department.

(Reading:) J. Richardson, A. Fernandez—that is Mr. Richardson, of Maui?

A. Yes; Richardson and Fernandez are selected. They would be called upon to be present [having a check \checkmark mark].

Q. Then among those that would be called upon to be present at any meeting would be Richardson and Fernandez?—A. Yes. (Reading:) J. F. Colburn, C. White, Hon. Alex. Robertson.

Q. What does the round mark \oplus mean near the name?—A. That they have been Government officers.

(Reading:) W. R. Holt, P. D. Kellett—he has a round mark.

A. He is a clerk.

(Reading:) W. Aylett, Kaunama, Kanuokano, C. Maile.

A. He is not an officer—the mark ought to be rubbed out.

(Reading:) P. Woods.

A. He is a Government officer.

(Reading:) C. Nolein (no mark), J. Cummins, J. E. Bush (mark \checkmark), W. R. Wilcox, Joseph Nawahi, C. L. Hopkins (he is marked \checkmark), Bergemann, G. E. Boardman.

A. He was deputy collector of customs.

(Reading:) J. Testa, H. B. Defrees, S. Dwight, J. D. Holt—he has a round mark.

A. He is a Government officer.

(Reading:) H. Poor, J. L. Kaulakou—he has a round mark—Kahaomi, there is no mark, Alapi, H. Smith, Carl Widdeman. The only names that have check (\checkmark) marks opposite them are John Richardson, A. Fernandez, Kellet, Sam'l K. Pira, Kaluomano, C. L. Hopkins, J. E. Bush, J. L. Kaulokou.

A. Those are all I have selected.

Q. I see you have a second list.—A. Yes; that is the foreign list.

(Reading:) J. O. Carter (check), F. A. Schaefer (check), John H. Phillips (check), J. E. Quinn (check), Dr. Geo. Trousseau (check), J. Campbell (check), C. J. McCarty (check), T. R. Lucas (check), R. More (check).

A. Those with checks are my selection.

(Reading:) P. Neumann, McIntyre, W. H. Rommell, C. W. Ashford, R. F. Bickerton. Is that the judge?

A. Yes.

(Reading:) J. W. Robertson, Daniel Logan, Lloyd A. P. Peterson, E. Narvie, Rickard, Fred. Harrison, W. F. Love, Maj. Seward, W. Cunningham, E. S. Cunha, H. A. Widemann, A. P. Cleghorn, W. G. Irwin, J. B. Peterson, T. R. Walker (British vice consul), Marquise, W. A. Whiting, Crowley, L. G. Levey, C. O. Berger, J. Kenyon, Capt. Jno. Ross, Geo. F. Ross, sr., E. B. Thomas, T. B. Walker, J. F. Bowler, F. Wundenburg. These are foreign names that you had picked?

A. Yes.

Q. Did you pick them yourself?—A. I picked them out to propose to the cabinet.

Q. Who prepared this paper?—A. Kenyon, who was my former secretary and clerk, did the typewriting from the copy I furnished him.

Q. Do I understand that you drew up this without consultation with any other person?—A. Yes, sir.

Q. Did you have any intimation from any person in the world that the Queen would be restored?—A. I had not.

Q. This is your own work entirely?—A. It is.

Q. You are a pretty good lawyer if you drew this up. This is your verbiage?—A. Yes, sir.

- Q. Have you ever studied law?—A. No.
- Q. Did anybody see this?—A. Mr. Peterson.
- Q. Did he aid you?—A. No.
- Q. Who else saw it?—A. Peterson, Paul Neumann, and the Queen saw it.
- Q. When did the Queen see this?—A. The day before your arrival. She saw the original four months ago.
- Q. This has been a long-pending matter, then?—A. Yes.
- Q. Did you have any authority from the Queen to do it?—A. No.
- Q. Did she approve of all this?—A. Yes.
- Q. Who was present?—A. My wife.
- Q. Yourself and your wife were present when you submitted this to the Queen—the original paper, of which this is a copy—and she approved it?—A. Yes.
- Q. What do you mean by saying “to be dealt with by a court especially appointed for that purpose?” Was it a court within or without the law?—A. A court under martial law.
- Q. I see one of your details calls for the “suspension of habeas corpus and trial by martial law?”—A. Yes.
- Q. What is meant in clause 7 by “prohibiting the departure of sailing vessels?”—A. To prevent carrying news to excite the people on the other islands.
- Q. Did you discuss with the Queen as to the time—how long—martial law ought to last?—A. No.
- Q. What do you mean by the “reappointment of officials and filling of vacancies,” in clause 8?—A. The reappointment of those who had been dismissed by the Provisional Government.
- Q. What do you mean by “filling the vacancies?” Take the case of Mr. Dole, would you consider all those offices vacated?—A. Yes.
- Q. Section 9. How about the arrest of “all persons concerned in the late movement?”—A. We propose to arrest all leaders in the revolution.
- Mr. WILLIS. I took this paper. I do not intend that you should draw any inference whatever from that. I am surprised to hear you say you are the sole author of this paper. My idea was that you had been in consultation with others. It seems strange that you should have written this without any knowledge of what the United States meant to do. That you may not misunderstand me I now return the paper. I did not know at the time what its contents were. I wished to inquire from you in regard to the authorship, etc. I would not have taken it had I known its contents.
- Q. You say you gave a copy to Mr. Paul Neumann. Is he now the Queen’s attorney?—A. He is now and always has been. I gave, also, a copy to Mr. Peterson and other members of the cabinet.

Mr. Willis to Mr. Gresham.

No. 11.]

LEGATION OF THE UNITED STATES,
Honolulu, Hawaiian Islands, December 14, 1893.

SIR: The day set apart by the President’s proclamation as a day of thanksgiving was appropriately observed by the American citizens residing in Honolulu. The customary newspaper notices from the U. S. legation were inserted and services were held in the Central Union and St. Andrew’s churches.

Very respectfully,

ALBERT S. WILLIS.

Mr. Willis to Mr. Gresham.

No. 12.]

LEGATION OF THE UNITED STATES,
Honolulu, Hawaiian Islands, December 14, 1893.

SIR: Your cipher telegram of the 2d instant was delivered to me by Capt. Munger of the revenue cutter *Corwin* this Thursday morning, December 14, at about 6:30 o’clock. I gave it to Admiral Irwin within a half-hour. He and his secretary have been engaged in deciphering

it up to this time, 3 p. m. The steamship *Mariposa* was to leave at 12 m., but the agents voluntarily offered to detain her until 5 p. m., which offer I accepted in the hope that after reading your telegram I might answer it.

In view of the length of time required to translate the naval cipher, I desire to most respectfully renew the suggestion made in my dispatch, No. 9, of December 5, that the State Department cipher or the one which I heretofore inclosed to you be hereafter used.

The excitement consequent upon the unexpected arrival of the *Corwin* is intense throughout the city. The President's message, which was published this morning, has increased the excitement, but I hope no immediate outbreak will occur.

With high regard, very respectfully,

ALBERT S. WILLIS.

Mr. Willis to Mr. Gresham.

No. 13.]

LEGATION OF THE UNITED STATES,
Honolulu, Hawaiian Islands, December 14, 1893.

SIR: I have the honor to acknowledge the receipt of Department dispatch, No. 5, inclosing two copies of the report of the electrical congress held in Chicago August 19, 1893, in the matter of units of electrical measure.

Very respectfully,

ALBERT S. WILLIS.

Mr. Willis to Mr. Gresham.

[Confidential.]

No. 14.]

LEGATION OF THE UNITED STATES,
Honolulu, Hawaiian Islands, December 18, 1893.

SIR: Your cipher instructions of December 2 were received as translated at 3 p. m. Thursday, the 14th instant. An arrangement was immediately made for an interview with the Queen for Saturday, December 16 at 9 a. m.

Mr. J. O. Carter was invited to be present. Mr. Carter, as stated in my dispatch No. 3, of November 14, is a brother of the late Mr. H. A. P. Carter, who was the Hawaiian minister to the United States. He is the president and manager of the incorporated company of "C. Brewer & Co.," which does a large general mercantile and commission business, and is agent for a number of large sugar plantations. He is conceded by all factions to be a man of great intelligence and strict integrity. He is a native Hawaiian, but of American parentage.

At the appointed hour the Queen and Mr. Carter came, and the interview was, with their consent, reported stenographically by Mr. Mills, our consul-general.

I inclose the report, verified by the Queen and Mr. Carter. I also send a copy of a part of the interview with the Queen, reported in my dispatch No. 3, of November 14, which is also verified by the Queen, marked A.

Mr. Mills' report includes all that was said. It will be observed that no restrictions were placed upon the Queen or upon Mr. Carter, the object being to secure a full and unreserved expression of views. This interview was held at the legation.

Very respectfully,

ALBERT S. WILLIS.

The Queen was informed that the President of the United States had important communications to make to her and she was asked whether she was willing to receive them alone and in confidence, she being assured that this was for her own interest and safety. She answered in the affirmative.

I then made known to her 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. To this she bowed her acknowledgments.

I then said to her: "The President expects and believes that when reinstated you will show forgiveness and magnanimity, that you will wish to be Queen of all the people, both native and foreign born, that you will make haste to secure their love and loyalty, and to establish peace, friendship, and good government." To this she made no reply. After waiting a moment I continued:

DECEMBER 16, 1893.

Mr. WILLIS (addressing the Queen). I sent word yesterday asking you to come this morning and to bring Mr. Carter, whom you had mentioned in a previous interview as one of your friends. His was the first name given to me in the only interview we have had. My idea was to have some one present as your friend, who could hear what I wish to say to-day.

(Addressing Mr. Carter, Mr. Willis said:)

Mr. Carter, before having any further conversation it is proper I should make known to you what occurred at the previous interview. On the 13th of November I sent word to the Queen asking if she would come here, as there would be less publicity than if I went to her house. She complied, came here with Mr. Robertson, and a conversation ensued the substance of which I have made known to the President. I will read what I have written as an official report to the President, as leading up to the present interview, and as I read [speaking to the Queen] if there is any portion of the interview as given that you think is incorrect do not hesitate to stop me and make such changes as you desire, although it has been already submitted.

[The report in question was at this point read to the Queen by Mr. Willis. It is appended hereto, marked A.]

Mr. WILLIS. I wish to ask you now, and I ask you to deliberate well before answering, whether the views expressed at that time, as read to you now, have been in any respect modified since that conversation?

The QUEEN. They have not.

Mr. WILLIS. You still adhere to your judgment, as then expressed, that all of those persons should be punished according to the law under the constitution of 1887, which is that they should be punished with capital punishment and their property confiscated?

The QUEEN. I feel that if any change should be made that they must not be permitted to remain in the country, and that their property should be confiscated. That is my view.

Mr. CARTER. You do rescind so much of that interview as pronounced upon them the death penalty?

The QUEEN. I do in that respect.

Mr. CARTER. You feel that their remaining in the country would be a constant source of trouble to you and your people?

The QUEEN. I do. I think I mentioned at the time that should they be permitted to remain, that as they have once committed treason and this being the second offense, that the next time would be dangerous for the community and the people. I think I said that in the other conversation.

Mr. CARTER. In general terms, then, you feel that the continued living in this community of these persons who were guilty of the act of 1887, and the act of the 17th of January, would be dangerous and a constant menace to your people?

The QUEEN. I do. I feel also that if they were sent away they should never be permitted to return—they or their children.

Mr. CARTER. Unless you exercised clemency; or would you pronounce against them definitely now?

The QUEEN. I feel so; that they should be permanently banished, and their children.

Mr. WILLIS. The present Provisional Government while in existence has created certain obligations. Would you consent that all such obligations assumed in the proper course of administration should be assumed and paid by you?

Mr. CARTER. May I make it clearer? The minister wishes to know if the obligations the Provisional Government has entered into under the law, you would be willing that your Government should assume and be responsible for those obligations.

The QUEEN. Yes.

Mr. CARTER. I want to make matters clear. I think they have been careful as a rule to observe statutory provisions, but there have been exigencies that demanded actions that are entirely outside statutory provisions—appropriations made, moneys expended. The question is, how far the new Government should be responsible for such acts.

Mr. WILLIS. That is the question to which I desire an answer. Whether, in the exercise of their discretion, they have even adopted measures that may not be strictly conformable to the statutory law of the land, but if the money has been expended for the benefit of the people in the matter of roads or in any other way, and not put into their private pockets. If these expenditures have been of a public character, and there is no charge of corruption, would they be recognized, whether strictly in conformity with the statutory law or not?

The QUEEN. I think such expenditures are legal. I would recognize them.

Mr. CARTER. There has been a very heavy expenditure for military.

Mr. WILLIS. That is a question I wish explicitly answered. Grant that there has been; would you or would you not consider that an expenditure in the proper course of administration?

The QUEEN. I have thought the matter over; but I felt that the confiscation of the properties belonging to these parties would cover.

Mr. CARTER. You believe that persons should be held in their estates liable for such matters—military, police, and other expenditures of like nature?

The QUEEN. I do.

Mr. CARTER. I want to say a word. I have never said one word to Her Majesty on the subject. These questions are entirely new to me.

Mr. WILLIS. It is entirely proper for you to ask such questions as you have. Any question that brings out the exact views of Her Majesty is entirely proper. I understand [speaking to the Queen] then, in answer to the last question, that you would be willing to give an unqualified agreement that all obligations created by the Provisional Government in the ordinary course of administration should be assumed, but that as to the expenditure for police and military defense you would leave the cost of that to be met out of property confiscated from those who were engaged in the revolution? Is that right?

The QUEEN. Yes.

Mr. WILLIS. I understand from you that you would be unwilling to give a pledge that would absolutely prevent the adoption of any measure of proscription or punishment for what has been done in the past, as to those setting up and supporting the Provisional Government. I understand you to be unwilling to give such a pledge?

The QUEEN. I do not understand.

Mr. WILLIS. I understand from the fact that you have affirmed our previous conversation, and from your conversation to-day, that you would not be willing to grant absolute amnesty both as to persons and property to those who have either supported or who have aided in setting up the Provisional Government. That you feel you could not do it?

The QUEEN. I feel I could not do it for the safety of our subjects.

Mr. CARTER. That is, that the continued presence of these people is a continued menace?

Mr. WILLIS. Do you adopt Mr. Carter's words?

The QUEEN. I do.

Mr. CARTER. I would like to make one remark here. Do I understand your Majesty that this matter is one that you may personally decide—that it is not one that you can commit to the ministers that you may appoint?

Mr. WILLIS. I am not instructed to ask such views. It is the views of the Queen herself I wish to ascertain. I have asked you to come here so that there can be no mistake in the matter. I am authorized, directly instructed and absolutely required to know three things—two of which I have asked, and I am now about to ask the third. It is this: Whether in the event of a restoration it would be a restoration under the existing constitution of the country or under a different constitution?

The QUEEN. I believe it would be better to have a government under a new constitution that would be more suited to the present times and to the future. May I add—

Mr. WILLIS. Anything at all. There is no restriction upon what you may say.

The QUEEN. That it would be one that would give the same privileges to my subjects as to the foreign subjects in my country. That they should receive the same advantages as the foreigners of which they have been deprived since 1887.

Mr. WILLIS. If I understand you the objection you have to the constitution of 1887 is the property qualification in voting for nobles, by which the native population is largely excluded from suffrage.

The QUEEN. That is correct.

Mr. WILLIS. Is there any other objection to that constitution?

The QUEEN. That is the principal objection. In the constitution I intended to promulgate, I changed the time of the term of the chief justice to six years, because I felt that if it were a life appointment that there are no bounds by which whoever holds the office—there would be no bounds by which he would carry on. There would be no limit to his actions.

Mr. WILLIS. In your remark as to the supreme court, do you limit it to the chief justice or does it include all the supreme court?

The QUEEN. All of them.

Mr. WILLIS. You mean not only the chief justice, but your judgment is that all of the supreme court should be appointed for six years?

The QUEEN. Yes; but if they proved themselves correct in their department they may be appointed over again for another six years.

Mr. WILLIS. How are their salaries to be determined?

The QUEEN. It would not affect the salary.

Mr. WILLIS. The salary would remain as at present?

The QUEEN. Yes.

Mr. WILLIS. The reason I ask you was that there has been some rumor that the question of salary was to be left to the legislature.

The QUEEN. I think the legislature would appropriate the sum.

Mr. CARTER. The minister wishes to know whether the salary they entered the office with would be the salary they would continue to receive?

The QUEEN. Yes.

Mr. CARTER. The idea is that they are not to be reduced to submit to the will of the legislature.

Mr. WILLIS. Is it your idea that the salaries they receive at the time of their appointment shall not be subject to change by the legislature or other action during the term of six years?

The QUEEN. Yes. These questions may be submitted to the cabinet.

Mr. CARTER. That is another question. The minister wishes to get at your thought.

Mr. WILLIS. You are the only one now authorized to speak for your Government. In the conversation you have had to-day in the presence of Mr. Carter, you fully comprehend the meaning of all that has been said, and all that you have said, and you adhere to it?

The QUEEN. I do.

Mr. WILLIS. You adhere to it?

The QUEEN. I do.

Mr. WILLIS. When this is written out and you have made such changes as you deem proper, I will ask you to sign it. When signed, it will be submitted to the President. Is there anything further you desire to say at the present time?

The QUEEN. I wish to mention, speaking of the new constitution, that it would require some changes. The new constitution I wish to make up would require more members.

Mr. WILLIS. Of the legislature?

The QUEEN. No; in the cabinet.

Mr. WILLIS. Had you determined in your mind how many should be in the cabinet?

The QUEEN. Six instead of four.

Mr. WILLIS. Have you anything more you wish to say?

The QUEEN. Nothing more.

The within report of an interview held between the Queen and Mr. Willis, the United States minister, on the 16th instant (Mr. J. O. Carter being present at the said interview), has been read in our presence by Consul-General Mills, and agreed to by both of us as being full and correct in every particular.

LILIUOKALANI.
J. O. CARTER.

HONOLULU, HAWAIIAN ISLANDS,
December 18, 1893.

Witness:
ELLIS MILLS.

(Indorsement:) Interview with ex-Queen, Saturday, December 16, 1893. This interview took place at the legation.

Mr. Willis to Mr. Gresham.

[Confidential.]

No. 15.]

LEGATION OF THE UNITED STATES,
Honolulu, Hawaiian Islands, December 19, 1893.

SIR: In the forenoon of yesterday (Monday, December 18) Mr. Mills met the Queen and Mr. Carter at the Queen's private residence, "Washington Place," when the report of the interview held at the legation on the preceding Saturday was read over and verified.

After the close of Saturday's interview and the withdrawal of the parties, Mr. Carter returned to inquire whether a supplementary statement by the Queen would be received. He informed me that he had held a conversation with her a few minutes after she left the legation, and he believed that on next Monday (this being Saturday) she would desire another interview. I told him that the object of the President was to ascertain her course of action in the event of restoration; that the United States could not dictate the policy of the Queen, if restored, nor interfere in any way with the domestic affairs of her Kingdom. A certain status or condition of affairs existed on the 17th of January, 1893, which was overthrown by our unlawful intervention. If the President, within constitutional limitations, could remedy this wrong, he was willing to do so, and to this extent only and under these circumstances only he inquired as to the future policy of the Queen. Whatever she determined upon, however, must be her voluntary act.

With this explanation I consented to receive further communications from the Queen.

Accordingly, upon learning that the Saturday interview had been verified, I went to Washington Place, where the interview occurred, a report of which I inclose.

Very respectfully,

ALBERT S. WILLIS.

[Inclosure with No. 15.]

DECEMBER 18, 1893.

Mr. CARTER. I am permitted by Her Majesty to say that I have had a conversation with her this morning concerning the first interview you had with her; that I have said to her that I was surprised and pained at the substance of it; that I have felt that the remarks you have made as coming from the President of the United States are entitled to Her Majesty's consideration, and that they are to carry weight as being the expressions of the President, particularly in reference to this first statement, where the President expresses his 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 coöperation, the wrong done to her and her people might be redressed."

I have explained as clearly as possible the meaning of the words "consent and coöperation;" that he recognizes he alone can not do all that has to be done.

I then referred to this expression as given by you, that the President believes "that when reinstated you will show forgiveness and magnanimity, that you will wish to be Queen of all the people, both native and foreign born, that you will make haste to secure their love and loyalty and to establish peace, friendship and good government."

I have said to her that I have been deeply impressed with that language and I think that perhaps Her Majesty is now more impressed with this language than she was at first, and I say to her that it seems to me good government is impossible without Her Majesty shows a spirit of forgiveness and magnanimity; that this movement against her and her people embraced a large and respectable portion of the foreign element of this community—an element we can not ignore.

I next came to this expression: "Should you be restored to the throne, would you grant full amnesty as to life and property to all those persons who have been or are now in the Provisional Government, or who have been instrumental in the overthrow of your Government?"

I have said to Her Majesty that it seems to me that the position of Mr. Cleveland is full of difficulties and embarrassments; that as President of the United States he is a ruler among the nations of the earth as Her Majesty was and, I hope, is to be, and that she should make the way as clear to him to carry out his wishes to repair the wrong done as she possibly can, not giving way to any personal feelings in the matter; that she must leave out of consideration in the question any idea of revenge. I told her that I took it as the wish of the President that she should grant amnesty as to life and property.

Then I went on to the remark that she makes that she feels unsettled and unsafe with these people in the country. I am bound to repeat what Her Majesty said to me, although it may not be in accord with my own views, that she feels that these people should leave the country, or peace and good government can not prevail. She thinks any third attempt at revolution on the part of these people would be very destructive to life and property; that her people have stood about all they can stand of this interference with what they consider their rights.

I have gone into the matter of the constitution with her, because I know our views are not as fully in accord as I wish they were. I have said to Her Majesty that I think she can safely put her cause into the hands of the President of the United States, and say to him unreservedly, "You dictate my policy and I will follow it."

Is Your Majesty satisfied with the statement I have made? Is it correct?

The QUEEN. Yes.

Mr. CARTER. Is it your wish?

The QUEEN. I must think a moment.

Mr. CARTER. But you said you are not seeking the lives of these people.

The QUEEN. Not their lives. I am willing their lives should be spared.

Mr. CARTER. And their property?

The QUEEN. Their property should be confiscated to the Government, and they should not be permitted to remain in the Kingdom.

Mr. CARTER. Is Your Majesty willing that this should be taken by the minister as your wish to-day, that this matter should be put unreservedly in the hands of President Cleveland with this statement. This is said by me as a friend, and I think you have always found me such. In the conversation had with you this morning I asked you as a friend to you and your people that you give it prayerful consideration. You need not sign it if you do not wish. It is your privilege to do as you please. I wish you would read it over, consider it, and give it to Mr. Willis at as early a moment as possible.

The QUEEN. I should like to talk with some of my friends.

Mr. CARTER (to Mr. Willis). Can she see some one in the matter?

Mr. WILLIS. I do not think it would be safe. I take it for granted that in matters of such great importance she has ascertained the wishes of her native people and the leaders, and that she has been in consultation with them upon these general propositions. Is not that true, Your Majesty? I mean as to the general policy to be pursued?

The QUEEN. I have. I must mention here (speaking to Mr. Carter) that I have never consulted you in this matter before. But I have talked the situation over with some of my subjects, and I consider their judgment is wise and in accordance with law, and have come to the conclusion that the statement I gave in my first interview was what the people wished. I had hoped some day I might have a chance to confer with you, Mr. Carter, in these matters.

Mr. WILLIS. I understand, then, that you said that the first interview I had with you embodies the views of the leaders of your people with whom you have been in consultation in the present crisis?

The QUEEN. They do.

Mr. WILLIS. And you have no withdrawal to that to make this morning?

The QUEEN. Although I have never stated to them what I had decided personally, still I feel that there may be some clemency, and that clemency should be that they should not remain in the country.

Mr. WILLIS. That is the extent of the clemency—that they should be removed from the country instead of being punished, according to the laws of the country, with death.

The QUEEN. Yes.

Mr. WILLIS. I understand that there is no withdrawal of your conversation of Saturday with reference to military expenses and police expenses that have been incurred by the Provisional Government. You still insist that those expenses should be met out of property confiscated?

The QUEEN. I feel so.

Mr. WILLIS. I understand that you would not be willing that the constitution as it existed on the 17th of January, 1893, should be established permanently in the Islands, believing, as you stated on Saturday, that it discriminated against your native subjects.

The QUEEN. The constitution I wished to promulgate was an improvement on the constitution of 1887, but since then I have considered further, and think that we ought to have a constitution that would be more suited to the future. I would not like to have the government continue under that constitution.

Mr. WILLIS. In the limitation which you now make as to your clemency, do you include their children or just the parents? Last Saturday you said: "They and their children." Do you still adhere to that judgment?

The QUEEN. I do.

Mr. WILLIS. Both parents and children should be permanently removed from the country and their property confiscated?

The QUEEN. I do, and their property confiscated.

Mr. WILLIS. I desire now to read to you in the express terms the judgment of the President. After citing the fact that Mr. Blount had been sent here to ascertain the facts in connection with this revolution, and after expressing a conclusion based upon Mr. Blount's report, that this revolution resulted largely if not entirely from the improper intervention of our then minister, and of the American troops, and expressing his desire within certain limitations to correct the wrong done, he states as follows:

"On your arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of this determination. * * * 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."

I read now from a cipher dispatch which has been sent since my communication of the 14th of November, in which it is stated:

"Should the Queen refuse assent to the written conditions, you will inform her at once [which I now do] that the President will cease interference in her behalf, and while he deems it his duty to endeavor to restore to the sovereign the constitutional government of the islands, his further efforts in that direction depend upon the Queen's unqualified agreement that all obligations created by the Provisional Government in the proper course of administration shall be assumed, and upon such pledge by her as shall prevent 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.

"The President feels that we by our original interference have incurred responsibilities to the whole Hawaiian community, and it would not be just to put one party at the mercy of the other."

The QUEEN. I want to say in regard to the request of Mr. Cleveland asking for complete amnesty—how shall I know that in future our country will not be troubled again, as it has been in the past?

Mr. WILLIS. That is a question of domestic policy of the country which you have to decide largely for yourself. Do you intend to inquire as to whether the United States would support you if restored?

The QUEEN. I do not expect that. The decision I have given is not from any feeling of disrespect to the President nor from a feeling of animosity toward anyone here, but I feel it is a duty I should assume for the benefit of my people.

Mr. WILLIS. I so understand it—that you are of the opinion that under the state of things which existed at the time of this revolution, and also in 1887, that there could not be permanent peace in the islands. That is a matter that the United States has no right to look into or express an opinion upon.

The foregoing has been read to us by Consul-General Mills, and we pronounce it a full and correct report.

Honolulu, H. I., December 18, 1893.

LILIUOKALANI.
J. O. CARTER.

Witness:
ELLIS MILLS.

(On back:) Interview with ex-Queen in presence of Mr. J. O. Carter. Monday, December 18, 1893. This interview occurred at Washington Place, the ex-Queen's private residence.

After this paper was signed, as above, Mr. Mills said to the Queen, in behalf of Mr. Willis, that the reports of the two interviews of Saturday, December 16, and of to-day (Monday, December 18), as attested by her, would be immediately forwarded to the President, and his answer, when received, should be promptly made known to her.

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

addressing the President, who was for the time being the formal representative of these people, I felt no hesitancy in employing the usual terms of friendship, drawing, however, in what I said, a distinction between the Provisional Government as a government and the people of the islands. These statements were not only, as I have said, consistent with the uniform policy and feelings of the United States for half a century, but expressed, as I knew, the personal feelings of the President and of yourself towards the officers of the Provisional Government as men, and the kindly regard and interest felt in the welfare and happiness of all the people who are now under its *de facto* rule.

From that day until last Tuesday at half-past one, there has been no expression, direct or indirect, from the representative of the United States towards the Provisional Government, explaining or defining our relations, present or prospective, towards it. The delay in making any announcement of your policy was, as you well understand, because of the direct verbal and written instructions under which I have been acting. Under those instructions my first duty was to guard the life and safety of those who had by the act of our own minister been placed in a position where there was an apparent antagonism between them and our Government. As I understood from the President and from you, the sole connection which our Government had with the settlement of the Hawaiian question was the undoing of what, from an international standpoint, was considered by the President to have been a wrong to a feeble, defenseless, and friendly power. In undoing this wrong I was, however, instructed first of all to see that proper safeguards were thrown around those who had been probably misled as to the position of our Government and the wishes of our people.

My dispatch No. 3, of November 14, set forth my inability to secure satisfactory guarantees from the Queen upon the points indicated. Until that was done you had directed me to take no further steps, but to inform you of the result, which I did by a cipher telegram as well as by the dispatch referred to. Your cipher instruction in reply thereto, dated December 2 and received by me December 14, by the revenue cutter *Corwin*, reiterated the duty which had been already enjoined upon me to secure these guarantees.

I accordingly renewed my efforts in that direction, and finally, on last Tuesday morning at 9 o'clock, as hereinbefore stated, I secured from the Queen the written pledge and agreement which was the prerequisite of my further action.

Having received this pledge, I was then for the first time in a position to make known to the Provisional Government the decision of the President upon the questions that had been submitted to him by the protest of the Queen, which protest had been acknowledged and accepted by the Provisional Government through its President, Mr. Dole, the immediate effect of which was, according to the statement of Mr. Damon, another honored member of the Provisional Government, the Queen's temporary surrender of her throne.

You will observe that in presenting the decision of the President I have used the language employed by yourself in your instructions to me upon the subject. In my opening statement I thought proper to explain what was known to you, and doubtless to the Provisional Government, that the secrecy which had been observed by our Government was in the interest of the peace and safety of this community.

The President's attention had been called by you to the evidence contained in Mr. Blount's report showing the extraordinary complications and dangers surrounding this community, among which were the racial

prejudices, the intense feeling consequent upon the dethronement of the constitutional sovereign, the presence of so many different nationalities—Chinese, Japanese, Portuguese, Americans, and English—in such large numbers and with such diverse traits and interests, the possibility that the Japanese, now numbering more than one-fifth of the male population of the islands, might take advantage of the condition of affairs to demand suffrage and through it to obtain control of the Government, together with the discontent of the native Hawaiians at the loss of their Government and of the rights secured under it.

In addition to these facts, I was fully apprised by you in your personal conversations of the presence here of many lawless and disorderly characters, owing allegiance to neither party, who would gladly take advantage of the excitement and general derangement of affairs to indulge in rapine and mob violence; and also of the conflict between the active responsible representatives of the Provisional Government and certain men who were not officially connected with it, but who had undertaken to dictate its policy. The danger from this last source I found upon arriving here was much greater than you had supposed. As I stated to you in my dispatch, No. 2, of November 10, the President and ministers of the Provisional Government and a large per cent of those who support them are men of high character and of large material interests in the islands. These men have been inclined to a conservative course toward the Hawaiians.

They had placed in the police and fire departments, and also in many other more important offices, native Hawaiians, thus endeavoring to conciliate the friendship and support of the 40,000 natives of the country. The irresponsible element referred to were pressing for a change of this wise and patriotic policy and insisting that they should be invested with all power, thus intensifying and aggravating the racial feeling already too extreme. Many of these men were open in their threats against the life of the Queen. They have even gone as far in the public prints and elsewhere as to threaten the representatives of the Provisional Government in the event they should listen to the President's supposed policy of peaceful settlement, if it involved the restoration of the Queen.

Besides this danger, which would have been precipitated by any premature announcement of the policy of our Government, there was another danger deserving serious attention.

The native Hawaiians, under the wise advice of their best native leaders supplemented by that of many sympathizing foreigners, have maintained the policy of peace during the settlement of this question. While, however, they have been always known as a peaceful and law-abiding people, the evidence of the most thoughtful men in these islands, including Mr. Damon, the present minister of finance, called attention to the fact that under proper leadership they might collect quite an effective and aggressive following; hence his opinion given to Mr. Blount while here and to me since that a strong force should be retained by the Provisional Government or else trouble might result from a sudden attack on their part.

The history of the Hawaiian people, their well-known devotion to the cause of royalty or chieftainship, their willingness to sacrifice themselves in defense of their supposed rights or in redress of the wrongs imposed upon those whom they revered confirmed the opinion expressed by Mr. Damon as to their manly spirit and courage.

Repeatedly since I reached these islands I have been advised by those in the confidence of the native Hawaiians that it was very diffi-

cult to further restrain them. They were looking with confidence to the United States for an amicable settlement of their grievances, and this had exercised a wholesome influence upon their conduct. Any sudden announcement of an adverse result, or any attempt upon the dignity or life of the Queen, might, in their judgment, precipitate the most serious consequences.

Under this state of affairs, which was known in part, although not fully, to the Provisional Government, the policy of silence, to which you advised, until the time had arrived for definite action, was unquestionably wise and humane. My deliberate judgment is that a different course would have proved disastrous.

No one can estimate to what extent the presence of the different war vessels has prevented demonstrations of marked or other violence.

I need not assure you that I have endeavored faithfully to comply with the views and instructions of the President in regard to the military or naval forces of the United States. The two war ships now here were here when I came. During the month of last August a general license had been granted Admiral Skerrett by the Provisional Government to land and drill his forces whenever he so desired. On the 29th day of November, as has been stated in my dispatch No. 8 of December 5, the Provisional Government addressed me a note revoking this license, which action on behalf of our Government was promptly acquiesced in. No such privilege has been since exercised. So punctilious has been the doctrine of non-intervention that when the band of the *Philadelphia* came ashore one afternoon during a reception of some of the ladies of the navy Admiral Irwin's attention having been called to the fact that it had excited some comment he promptly issued an order that there should be no repetition of this incident.

The Japanese and English legations have been guarded by marines from their respective vessels, but no American soldier has been stationed here, and none will be. No official communication has been conveyed from me to the Provisional Government by any representative of the naval forces of the United States; nor did I, under my instructions, feel at liberty, as I otherwise gladly would have done, to consult with the admiral and high officers in command of our fleet, whose clear and intelligent judgment would have been of great advantage to me in the frequent and delicate questions that have arisen.

In a word, neither directly nor indirectly have I conveyed or countenanced the idea that our Government proposed to interfere by force in the domestic affairs of these islands. My visits to the United States men-of-war have for this reason been limited to two or three social occasions.

There has been, therefore, as little foundation for criticism in this direction as there was for the temporary secrecy observed, as we have seen, as a safeguard against sudden outbreak and mob violence.

Under these circumstances, and guided by your imperative instructions, I submitted the decision of the President as one which was of the greatest gravity and importance. What the answer will be I do not know, but hope to be able to report in a very short time, as President Dole stated that the Provisional Government would take the matter under its immediate advisement.

I have, etc.,

ALBERT S. WILLIS.

HAWAIIAN ISLANDS.

[Inclosure No. 1 with No. 17.]

*Mr. Dole to Mr. Willis.*DEPARTMENT OF FOREIGN AFFAIRS,
Honolulu, Hawaiian Islands, December 18, 1893.

SIR: I am informed that you are in communication with Liliuokalani, the ex-Queen, with a view of re-establishing the monarchy in the Hawaiian Islands and of supporting her pretensions to the sovereignty. Will you inform me if this report is true or if you are acting in any way hostile to this Government.

I appreciate fully the fact that any such action upon your part in view of your official relations with this Government would seem impossible; but as the information has come to me from such sources that I am compelled to notice it, you will pardon me for pressing you for an immediate answer.

Accept the assurances of distinguished consideration with which I have the honor to be sir,

Your excellency's obedient, humble servant,

SANFORD B. DOLE,
Minister of Foreign Affairs.

[Inclosure No. 2 with No. 17.]

*Mr. Willis to Mr. Dole.*LEGATION OF THE UNITED STATES,
Honolulu, December 19, 1893.

SIR: I have the honor to inform you that I have a communication from my Government which I desire to submit to the President and ministers of your Government at any hour to-day which it may please you to designate.

With high regard and sincere respect, I am, etc.,

ALBERT S. WILLIS.

[Inclosure No. 3 with No. 17.]

Memorandum.

MR. PRESIDENT AND GENTLEMEN:

The President of the United States has very much regretted the delay in the consideration of the Hawaiian question, but it has been unavoidable. So much of it as has occurred since my arrival has been due to certain conditions precedent, compliance with which was required before I was authorized to confer with you. The President also regrets, as most assuredly do I, that any seeming secrecy should have surrounded the interchange of views between our two Governments. I may say this, however, that the secrecy thus far observed, has been in the interest and for the safety of all your people.

I need hardly premise that the President's action upon the Hawaiian question has been under the dictates of honor and duty? It is now, and has been from the beginning, absolutely free from prejudice and resentment, and entirely consistent with the long-established friendship and treaty ties which have so closely bound together our respective Governments.

The President deemed it his duty to withdraw from the Senate the treaty of annexation which had been signed by the Secretary of State and the agents of your Government, and to dispatch a trusted representative to Hawaii to impartially investigate the causes of your revolution, and ascertain and report the true situation in these islands. This information was needed, the better to enable the President to discharge a delicate and important duty. Upon the facts embodied in Mr. Blount's reports, the President has arrived at certain conclusions and determined upon a certain course of action with which it becomes my duty to acquaint you.

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 yielded to the armed forces of the United States then quartered in Honolulu, relying on 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.

In view of these conclusions, I was instructed by the President to take advantage of an early opportunity to inform the Queen of this determination and of his views as to the responsibility of our Government.

The President, however, felt that we, by our original interference, had incurred responsibilities to the whole Hawaiian community, and that it would not be just to put one party at the mercy of the other. I was, therefore, instructed, at the same time, to inform the Queen that when reinstated, that the President expected that she would pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are or who 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.

In obedience to the command of the President I have secured the Queen's agreement to this course, and I now read and deliver a writing signed by her and duly attested, a copy of which I will leave with you.

(The agreement was here read.)

It becomes my further duty to advise you, sir, the executive of the Provisional Government and your ministers, of the President's determination of the question, which your action and that of the Queen devolved upon him, and that you are expected to promptly relinquish to her her constitutional authority.

And now, Mr. President, and gentlemen of the Provisional Government, with a deep and solemn sense of the gravity of the situation and with the earnest hope that your answer will be inspired by that high patriotism which forgets all self-interest, in the name and by the authority of the United States of America, I submit to you the question, "Are you willing to abide by the decision of the President?"

Mr. Willis to Mr. Gresham.

[Confidential.]

No. 18.]

LEGATION OF THE UNITED STATES,
Honolulu, December 23, 1893.—12 midnight.

SIR: President Dole has just delivered in person at this hour (midnight) the answer of the Provisional Government, declining for reasons therein stated to accept the decision of the President of the United States, a copy of which is herewith inclosed.

The revenue cutter *Corwin* is under sailing orders and will leave here in a few minutes for San Francisco. The captain has been instructed to slow up, if necessary, and enter the harbor of San Francisco at night and to deliver in person the dispatches numbered 14, 15, 16, 17, 18, and 19 to our dispatch agent at that place.

The object of this is to enable the President to receive these official

communications before any intimation of their character can be telegraphed.

I will on Tuesday acknowledge the receipt of the answer of the Provisional Government, notifying it that the President of the United States will be informed thereof, and that no further steps will be taken by me until I shall have heard from him. I shall deliver a similar communication to the Queen.

The very great excitement prevailing here and the peculiar conditions surrounding this people prompt the above course, which, I trust, will meet with the approbation of the President and of yourself.

I think it proper to acknowledge in this public way the efficient services rendered to the Government of the United States by our consul-general, Mr. Mills, since my arrival at this place.

I have, etc.,

ALBERT S. WILLIS.

[Inclosure with No. 18.]

Mr. Dole to Mr. Willis.

DEPARTMENT OF FOREIGN AFFAIRS,
Honolulu, December 23, 1893.

SIR: Your excellency's communication of December 19, announcing the conclusion which the President of the United States of America has finally arrived at respecting the application of this Government for a treaty of political union with that country, and referring also to the domestic affairs of these islands, has had the consideration of the Government.

While it is with deep disappointment that we learn that the important proposition which we have submitted to the Government of the United States, and which was at first favorably considered by it, has at length been rejected, we have experienced a sense of relief that we are now favored with the first official information upon the subject that has been received through a period of over nine months.

While we accept the decision of the President of the United States, declining further to consider the annexation proposition, as the final conclusion of the present administration, we do not feel inclined to regard it as the last word of the American Government upon this subject, for the history of the mutual relations of the two countries, of American effort and influence in building up the Christian civilization which has so conspicuously aided in giving this country an honorable place among independent nations, the geographical position of these islands, and the important and, to both countries, profitable reciprocal commercial interests which have long existed, together with our weakness as a sovereign nation, all point with convincing force to political union between the two countries as the necessary logical result from the circumstances mentioned. This conviction is emphasized by the favorable expression of American statesmen over a long period in favor of annexation, conspicuous among whom are the names of W. L. Marcy, William H. Seward, Hamilton Fish, and James G. Blaine, all former Secretaries of State, and especially so by the action of your last administration in negotiating a treaty of annexation with this Government and sending it to the Senate with a view to its ratification.

We shall therefore continue the project of political union with the United States as a conspicuous feature of our foreign policy, confidently hoping that sooner or later it will be crowned with success, to the lasting benefit of both countries.

The additional portion of your communication referring to our domestic affairs with a view of interfering therein, is a new departure in the relations of the two governments. Your information that the President of the United States expects this Government "to promptly relinquish to her (meaning the ex-Queen) her constitutional authority," with the question "are you willing to abide by the decision of the President?" might well be dismissed in a single word, but for the circumstance that your communication contains, as it appears to me, misstatements and erroneous conclusions based thereon, that are so prejudicial to this Government that I can not permit them to pass unchallenged; moreover, the importance and menacing character of this proposition make it appropriate for me to discuss somewhat fully the questions raised by it.

We do not recognize the right of the President of the United States to interfere in our domestic affairs. Such right could be conferred upon him by the act of this

Government, and by that alone, or it could be acquired by conquest. This I understand to be the American doctrine, conspicuously announced from time to time by the authorities of your Government.

President Jackson said in his message to Congress in 1836: "The uniform policy and practice of the United States is to avoid all interference in disputes which merely relate to the internal government of other nations, and eventually to recognize the authority of the prevailing party, without reference to the merits of the original controversy."

This principle of international law has been consistently recognized during the whole past intercourse of the two countries, and was recently reaffirmed in the instructions given by Secretary Gresham to Commissioner Blount on March 11, 1893, and by the latter published in the newspapers in Honolulu in a letter of his own to the Hawaiian public. The words of these instructions which I refer to are as follows: "The United States claim no right to interfere in the political or domestic affairs or in the internal conflicts of the Hawaiian Islands other than as herein stated (referring to the protection of American citizens) or for the purpose of maintaining any treaty or other rights which they possess." The treaties between the two countries confer no right of interference.

Upon what, then, Mr. Minister, does the President of the United States base his right of interference? Your communication is without information upon this point, excepting such as may be contained in the following brief and vague sentences: "She (the ex-Queen) was advised and assured by her ministers and leaders of the movement for the overthrow of her government that if she surrendered under protest her case would afterward be fairly considered by the President of the United States. The Queen finally yielded to the armed forces of the United States, then quartered in Honolulu, relying on 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." Also, "it becomes my further duty to advise you, sir, the Executive of the Provisional Government, and your ministers, of the President's determination of the question which your action and that of the Queen devolved upon him, and that you are expected to promptly relinquish to her her constitutional authority."

I understand that the first quotation is referred to in the following words of the second, "which your action and that of the Queen devolved upon him" (the President of the United States), and that the President has arrived at his conclusions from Commissioner Blount's report. We have had as yet no opportunity of examining this document, but from extracts published in the papers and for reasons set forth hereafter, we are not disposed to submit the fate of Hawaii to its statements and conclusions. As a matter of fact no member of the executive of the Provisional Government has conferred with the ex-Queen, either verbally or otherwise, from the time the new Government was proclaimed till now, with the exception of one or two notices which were sent to her by myself in regard to her removal from the palace and relating to the guards which the Government first allowed her and perhaps others of a like nature. I infer that a conversation which Mr. Damon, then a member of the advisory council, is reported by Mr. Blount to have had with the ex-Queen on January 17, and which has been quoted in the newspapers, is the basis of this astounding claim of the President of the United States of his authority to adjudicate upon our right as a government to exist.

Mr. Damon, on the occasion mentioned, was allowed to accompany the cabinet of the former Government, who had been in conference with me and my associates, to meet the ex-Queen. He went informally, without instructions and without authority to represent the Government or to assure the ex-Queen "that if she surrendered under protest her case would afterwards be fairly considered by the President of the United States." Our ultimatum had already been given to the members of the ex-cabinet who had been in conference with us. What Mr. Damon said to the ex-Queen he said on his individual responsibility and did not report it to us. Mr. Blount's report of his remarks on that occasion furnish to the Government its first information of the nature of those remarks. Admitting for argument's sake that the Government had authorized such assurances, what was "her case" that was afterwards to "be fairly considered by the President of the United States?"

Was it the question of her right to subvert the Hawaiian constitution and to proclaim a new one to suit herself, or was it her claim to be restored to the sovereignty, or was it her claim against the United States for the alleged unwarrantable acts of Minister Stevens, or was it all these in the alternative; who can say? But if it had been all of these, or any of them, it could not have been more clearly and finally decided by the President of the United States in favor of the Provisional Government than when he recognized it without qualification and received its accredited commissioners, negotiated a treaty of annexation with them, received its accredited envoy extraordinary and minister plenipotentiary, and accredited successively two envoys extraordinary and ministers plenipotentiary to it; the ex-Queen in the mean-

time being represented in Washington by her agent who had full access to the Department of State.

The whole business of the Government with the President of the United States is set forth in the correspondence between the two governments and the acts and statements of the minister of this Government at Washington and the annexation commissioners accredited to it. If we have submitted our right to exist to the United States, the fact will appear in that correspondence and the acts of our minister and commissioners. Such agreement must be shown as the foundation of the right of your Government to interfere, for an arbitrator can be created only by the act of two parties.

The ex-Queen sent her attorney to Washington to plead her claim for a reinstatement in power, or failing that for a money allowance or damages. This attorney was refused passage on the Government dispatch boat, which was sent to San Francisco with the annexation commissioners and their message. The departure of this vessel was less than two days after the new Government was declared, and the refusal was made promptly upon receiving the request therefor either on the day the Government was declared or on the next day. If an intention to submit the question of the reinstatement of the ex-Queen had existed, why should her attorney have been refused passage on this boat? The ex-Queen's letter to President Harrison, dated January 18, the day after the new Government was proclaimed, makes no allusion to any understanding between her and the Government for arbitration. Her letter is as follows :

"His Excellency BENJAMIN HARRISON,
"President of the United States:

"MY GREAT AND GOOD FRIEND: It is with deep regret that I address you on this occasion. Some of my subjects aided by aliens, have renounced their loyalty and revolted against the constitutional Government of my Kingdom. They have attempted to depose me and to establish a provisional government in direct conflict with the organic law of this Kingdom. Upon receiving incontestible proof that his excellency the minister plenipotentiary of the United States, aided and abetted their unlawful movements and caused United States troops to be landed for that purpose, I submitted to force, believing that he would not have acted in that manner unless by the authority of the Government which he represents.

"This action on my part was prompted by three reasons: The futility of a conflict with the United States; the desire to avoid violence, bloodshed and the destruction of life and property, and the certainty which I feel that you and your Government will right whatever wrongs may have been inflicted upon us in the premises.

"In due time a statement of the true facts relating to this matter will be laid before you, and I live in the hope that you will judge uprightly and justly between myself and my enemies. This appeal is not made for myself personally, but for my people, who have hitherto always enjoyed the friendship and protection of the United States.

"My opponents have taken the only vessel which could be obtained here for the purpose, and hearing of their intention to send a delegation of their number to present their side of this conflict before you, I requested the favor of sending by the same vessel an envoy to you, to lay before you my statement, as the facts appear to myself and my loyal subjects.

"This request has been refused, and I now ask you that in justice to myself and to my people that no steps be taken by the Government of the United States until my cause can be heard by you.

"I shall be able to dispatch an envoy about the 2d of February, as that will be the first available opportunity hence, and he will reach you by every possible haste that there may be no delay in the settlement of this matter.

"I pray you, therefore, my good friend, that you will not allow any conclusions to be reached by you until my envoy arrives.

"I beg to assure you of the continuance of my highest consideration.

"LILIUOKALANI R.

"HONOLULU, January 18, 1893."

If any understanding had existed at that time between her and the Government to submit the question of her restoration to the United States, some reference to such an understanding would naturally have appeared in this letter, as every reason would have existed for calling the attention of the President to that fact, especially as she then knew that her attorney would be seriously delayed in reaching Washington. But there is not a word from which such an understanding can be predicated. The Government sent its commissioners to Washington for the sole object of procuring the confirmation of the recognition by Minister Stevens of the new Government and to enter into negotiations for political union with the United States. The protest of the ex-Queen, made on January 17, is equally with the let-

ter devoid of evidence of any mutual understanding for a submission of her claim to the throne to the United States. It is very evidently a protest against the alleged action of Minister Stevens as well as the new Government, and contains a notice of her appeal to the United States.

The document was received exactly as it would have been received if it had come through the mail. The indorsement of its receipt upon the paper was made at the request of the individual who brought it as evidence of its safe delivery. As to the ex-Queen's notice of her appeal to the United States, it was a matter of indifference to us. Such an appeal could not have been prevented, as the mail service was in operation as usual. That such a notice, and our receipt of it without comment, should be made a foundation of a claim that we had submitted our right to exist as a government to the United States had never occurred to us until suggested to us by your Government. The protest is as follows:

"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 representative and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.

"Done at Honolulu the 17th day of January, A. D. 1893.

"LILIUOKALANI, R.
 "SAMUEL PARKER,
 "Minister of Foreign Affairs.
 "WILLIAM H. CORNWELL,
 "Minister of Finance.
 "JOHN F. COLBURN,
 "Minister of the Interior.
 "A. P. PETERSON,
 "Attorney-General.

"S. B. DOLE, Esq., and others,

"Composing the Provisional Government of the Hawaiian Islands."

(Indorsed:) "Received by the hands of the late cabinet this 17th day of January, A. D. 1893. Sanford B. Dole, chairman of executive council of Provisional Government."

You may not be aware, but such is the fact, that at no time until the presentation of the claim of the President of the United States of his right to interfere in the internal affairs of this country, by you on December 19, has this Government been officially informed by the United States Government that any such course was contemplated. And not until the publication of Mr. Gresham's letter to the President of the United States on the Hawaiian question had we any reliable intimation of such a policy. The adherents of the ex-Queen have indeed claimed from time to time that such was the case, but we have never been able to attach serious importance to their rumors to that effect, feeling secure in our perfect diplomatic relations with your country, and relying upon the friendship and fairness of a government whose dealings with us had ever shown full recognition of our independence as a sovereign power, without any tendency to take advantage of the disparity of strength between the two countries.

If your contention that President Cleveland believes that this Government and the ex-Queen have submitted their respective claims to the sovereignty of this country to the adjudication of the United States is correct, then, may I ask, when and where has the President held his court of arbitration? This Government has had no notice of the sitting of such a tribunal and no opportunity of presenting evidence of its claims. If Mr. Blount's investigations were a part of the proceedings of such a court, this Government did not know it and was never informed of it; indeed, as I have mentioned above, we never knew until the publication of Secretary Gresham's letter to President Cleveland a few weeks ago, that the American Executive had a policy of interference under contemplation. Even if we had known that Mr. Blount was authoritatively acting as a commissioner to take evidence upon the question of the restoration of the ex-Queen, the methods adopted by him in making his investigations were, I submit, unsuitable to such an examination or any examination upon which human interests were to be adjudicated.

As I am reliably informed, he selected his witnesses and examined them in secret, freely using leading questions, giving no opportunity for a cross-examination, and often not permitting such explanations by witnesses themselves as they desired to make of evidence which he had drawn from them. Is it hardly necessary for me to suggest that under such a mode of examination some witnesses would be almost helpless in the hands of an astute lawyer, and might be drawn into saying things which would be only half-truths, and standing alone would be misleading or even false in effect. Is it likely that an investigation conducted in this manner could result in a fair, full, and truthful statement of the case in point? Surely the destinies of a friendly Government, admitting by way of argument that the right of arbitration exists, may not be disposed of upon an *ex parte* and secret investigation made without the knowledge of such Government or an opportunity by it to be heard or even to know who the witnesses were.

Mr. Blount came here as a stranger and at once entered upon his duties. He devoted himself to the work of collecting information, both by the examination of witnesses and the collection of statistics and other documentary matter, with great energy and industry, giving up, substantially, his whole time to its prosecution. He was here but a few months, and during that time was so occupied with this work that he had little opportunity left for receiving those impressions of the state of affairs which could best have come to him, incidentally, through a wide social intercourse with the people of the country and a personal acquaintance with its various communities and educational and industrial enterprises. He saw the country from his cottage in the center of Honolulu mainly through the eyes of the witnesses whom he examined. Under these circumstances is it probable that the most earnest of men would be able to form a statement that could safely be relied upon as the basis of a decision upon the question of the standing of a government?

In view, therefore, of all the facts in relation to the question of the President's authority to interfere and concerning which the members of the executive were actors and eye-witnesses, I am able to assure your excellency that by no action of this Government, on the 17th day of January last or since that time, has the authority devolved upon the President of the United States to interfere in the internal affairs of this country through any conscious act or expression of this Government with such an intention.

You state in your communication—

"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; that he kept his promise by causing a detachment of troops to be landed from the *Boston* on the 16th of January, 1893, 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."

Without entering into a discussion of the facts I beg to state in reply that I am unable to judge of the correctness of Mr. Blount's report from which the President's conclusions were drawn, as I have had no opportunity of examining such report. But I desire to specifically and emphatically deny the correctness of each and every one of the allegations of fact contained in the above-quoted statement; yet, as the President has arrived at a positive opinion in his own mind in the matter, I will refer to it from his standpoint.

My position, is briefly, this: If the American forces illegally assisted the revolutionists in the establishment of the Provisional Government that Government is not responsible for their wrong-doing. It was purely a private matter for discipline between the United States Government and its own officers. There is, I submit, no precedent in international law for the theory that such action of the American troops has conferred upon the United States authority over the internal affairs of this Government. Should it be true, as you have suggested, that the American Government made itself responsible to the Queen, who, it is alleged lost her throne through such action, that is not a matter for me to discuss, except to submit that if such be the case, it is a matter for the American Government and her to settle between them. This Government, a recognized sovereign power, equal in authority with the United States Government and enjoying diplomatic relations with it, can not be destroyed by it for the sake of discharging its obligations to the ex-Queen.

Upon these grounds, Mr. Minister, in behalf of my Government I respectfully protest against the usurpation of its authority as suggested by the language of your communication.

It is difficult for a stranger like yourself, and much more for the President of the United States, with his pressing responsibilities, his crowding cares and his want of familiarity with the condition and history of this country and the inner life of its

people, to obtain a clear insight into the real state of affairs and to understand the social currents, the race feelings and the customs and traditions which all contribute to the political outlook. We, who have grown up here or who have adopted this country as our home, are conscious of the difficulty of maintaining a stable government here. A community which is made up of five races, of which the larger part but dimly appreciate the significance and value of representative institutions, offers political problems which may well tax the wisdom of the most experienced statesman.

For long years a large and influential part of this community, including many foreigners and native Hawaiians, have observed with deep regret the retrogressive tendencies of the Hawaiian monarchy, and have honorably striven against them, and have sought through legislative work, the newspapers, and by personal appeal and individual influence to support and emphasize the representative features of the monarchy and to create a public sentiment favorable thereto, and thereby to avert the catastrophe that seemed inevitable if such tendencies were not restrained. These efforts have been met by the last two sovereigns in a spirit of aggressive hostility. The struggle became at length a well-defined issue between royal prerogative and the right of representative government, and most bitterly and unscrupulously has it been carried on in the interests of the former. The King's privilege of importing goods for his own use without paying the duties thereon was abused to the extent of admitting large quantities of liquors, with which to debauch the electorate. He promoted the election of Government officers, both executive and judicial, to the legislative assembly, and freely appointed to office elected members thereof.

In the legislature of 1886, of which I was a member, the party supporting the Government was largely in the majority, and nearly every member of such majority held some appointment from the Government, and some of them as many as two or three, thereby effectually placing the legislative branch of the Government under the personal and absolute control of the King. The constitutional encroachments, lawless extravagance, and scandalous and open sales of patronage and privilege to the highest bidder by Kalakaua brought in at length the revolution of 1887, which had the full sympathy and moral support of all the diplomatic representatives in Honolulu, including Minister Merrill, who was at that time President Cleveland's minister here.

This revolution was not an annexation movement in any sense, but tended toward an independent republic, but, when it had the monarchy in its power, conservative counsels prevailed, and a new lease of life was allowed that institution on the condition of royal fidelity to the new constitution, which was then promulgated and which greatly curtailed the powers of the sovereign. Kalakaua was not faithful to this compact, and sought as far as possible to evade its stipulations. The insurrection of 1889 was connived at by him, and the household guards under his control were not allowed to take part in suppressing it. The Princess Liliuokalani was in full sympathy with this movement, being a party to it, and furnished her suburban residence to the insurgents for their meetings. The arrangements were there made, and the insurgents marched thence for their attack upon the Government. The affair was suppressed in a few hours of fighting, with some loss of life to the insurgents, by the party which carried through the revolution of 1887.

The ex-Queen's rule was even more reckless and retrogressive than her brother's. Less politic than he, and with less knowledge of affairs, she had more determination and was equally unreliable and deficient in moral principle. She, to all appearance, unhesitatingly took the oath of office to govern according to the constitution, and evidently regarding it merely as a formal ceremony began, according to her own testimony to Mr. Blount, to lay her plans to destroy the constitution and replace it with one of her own creation. With a like disregard of its sanctions, she made the most determined efforts to control all of the appointments to office, both executive and judicial. The session of the legislature of 1892 was the longest that had ever occurred in our history, and was characterized by a most obstinate struggle for personal control of the Government and the legislature on the part of the Queen. This was strenuously resisted by the opposition.

During this contest four ministerial cabinets were appointed and unseated, and the lottery-franchise bill, which had been withdrawn early in the session for want of sufficient support, was at the last moment, when the opposition was weakened by the absence of several of its members, again brought forward and passed through the exercise of improper and illegitimate influences upon the legislators, among which were personal appeals on the part of the Queen to them. The cabinet which represented the opposition and the majority of the legislature which the Queen had been compelled to appoint was unseated by similar means, and with a new cabinet of her own choice the legislature was prorogued. This lottery franchise was of a character corresponding with similar institutions which have been driven out of every State of the American Union by an indignant public sentiment. If it had been established here it would in a brief period have obtained full control of the Government patronage and corrupted the social and political life of the people.

Although the situation at the close of the session was deeply discouraging to the community, it was accepted without any intention of meeting it by other than legal means. The attempted *coup d'état* of the Queen followed, and her ministers, threatened with violence, fled to the citizens for assistance and protection; then it was that the uprising against the Queen took place, and, gathering force from day to day, resulted in the proclamation of the Provisional Government and the abrogation of the monarchy on the third day thereafter.

No man can correctly say that the Queen owed her downfall to the interference of American forces. The revolution was carried through by the representatives, now largely reinforced, of the same public sentiment which forced the monarchy to its knees in 1887, which suppressed the insurrection of 1889, and which for twenty years has been battling for representative government in this country. If the American forces had been absent the revolution would have taken place, for the sufficient causes for it had nothing to do with their presence.

I, therefore, in all friendship of the Government of the United States, which you represent, and desiring to cherish the good will of the great American people, submit the answer of my Government to your proposition, and ask that you will transmit the same to the President of the United States for his consideration.

Though the Provisional Government is far from being "a great power" and could not long resist the forces of the United States in a hostile attack, we deem our position to be impregnable under all legal precedents, under the principles of diplomatic intercourse, and in the forum of conscience. We have done your Government no wrong; no charge of discourtesy is or can be brought against us. Our only issue with your people has been that, because we revered its institutions of civil liberty, we have desired to have them extended to our own distracted country, and because we honor its flag and deem that its beneficent and authoritative presence would be for the best interests of all of our people, we have stood ready to add our country, a new star, to its glory, and to consummate a union which we believed would be as much for the benefit of your country as ours. If this is an offense, we plead guilty to it.

I am instructed to inform you, Mr. Minister, that the Provisional Government of the Hawaiian Islands respectfully and unhesitatingly declines to entertain the proposition of the President of the United States that it should surrender its authority to the ex-Queen.

This answer is made not only upon the grounds hereinbefore set forth, but upon our sense of duty and loyalty to the brave men whose commissions we hold, who have faithfully stood by us in the hour of trial, and whose will is the only earthly authority we recognize. We can not betray the sacred trust they have placed in our hands, a trust which represents the cause of Christian civilization in the interests of the whole people of these islands.

With assurances of the highest consideration,
I have, etc.,

SANFORD B. DOLE,
Minister of Foreign Affairs.

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

Mr. Willis to Mr. Gresham.

No. 19.]

DECEMBER 23, 1893.

This communication simply transmits minister's salary account.

[Telegram.]

WASHINGTON, *January 12, 1894.*

W. A. COOPER,
*U. S. Dispatch Agent,
Post-Office Building, San Francisco, Cal.:*

Forward following telegram to Hon. A. S. Willis, U. S. minister,
Honolulu, by steamer *Mariposa* to-morrow.

W. Q. GRESHAM.

WILLIS,
Minister, Honolulu:

WASHINGTON, *January 12, 1894.*

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

75
7569



L-206 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

FEB 24, 2003 08:01 AM

Doc No(s) 2895104

on Cert(s) 505,052

Issuance of Cert(s) 637,651

/s/ CARL T. WATANABE
ASSISTANT REGISTRAR
CONVEYANCE TAX: \$177.02



7 1/2 Z4

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (x) PICK-UP ()

Mr & Mrs Kale Gumapac
16-643 #15
Kipimana Street
Keaau, HI 96749

TG: 200023300-13
TGE: A0-302-0454
Yvonne Santos

Lc
①

(Total Document Pages = 7)

Affects TMK: (3) 1-5-055-062 and TCT No. 505,052

WARRANTY DEED

THIS DEED is made this 17th day of April,
2002, by and between the following parties:

“Grantor”: **LINDA VIVIAN LITTLE**, single, and **ALICE EVELYN LITTLE**,
unmarried, both whose address is 1206 E. Turner Drive, Longview, Texas
75601-6705.

“Grantee”: **KALE KEPEKAIO GUMAPAC and DIANNE** DEE
GUMAPAC, husband and wife, whose address is 16-643 Kipimana Street
15, Keaau, Hawaii 96749.

W I T N E S S E T H:

That in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, in fee simple, all of that certain property described in *Exhibit "A"* attached hereto and by reference made a part hereof, as **Tenants by the Entirety**, and Grantee's assigns and the survivor of the Grantee and his or her heirs, devisees, personal representatives and assigns.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

AND, in consideration of the premises, the Grantor does hereby covenant with the Grantee that the Grantor is seised of the property herein described in fee simple; that said property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid, and except as may herein specifically be set forth; that the Grantor has good right to sell and convey said property, as aforesaid; and, that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The rights and obligations of the Grantor and the Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, personal representatives, successors, successors in trust and assigns. All obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention shall be clearly expressed elsewhere herein.

The conveyances herein set forth and the warranties of the Grantor concerning the same are expressly declared to be in favor of the Grantee, Grantee's assigns, and the survivor of the Grantee and his or her heirs, devisees, personal representatives and assigns.


The terms "Grantor" and "Grantee," as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals, partnerships, corporations, or fiduciaries and their and each of their respective successors, successors in trust, heirs, personal representatives and assigns, according to the context thereof. If these presents shall be signed by two or more

Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

IN WITNESS WHEREOF, the Grantor has executed this *Warranty Deed* as of the day and year first above written.

GRANTOR:


LINDA VIVIAN LITTLE

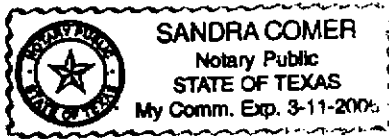

ALICE EVELYN LITTLE

APPROVED AS TO FORM:
TSUKAZAKI YEH & MOORE
A Limited Liability Law Company

By 
THOMAS L. YEH
November 24, 2000

STATE OF TEXAS)
)
COUNTY OF Gregg) ss.

On this 17 day of April, ~~2000~~²⁰⁰², before me personally appeared **LINDA VIVIAN LITTLE**, to me known (or who has proven to me on the basis of satisfactory evidence) to be the person described in and who executed the attached *Warranty Deed*, and who acknowledged that she executed said instrument as her free act and deed.



[Seal]

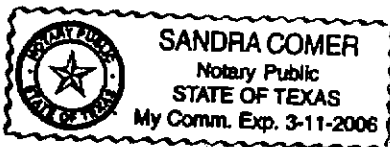
Sandra Comer
(Notary's signature)

SANDRA COMER
(Type/Print clearly notary's name)
Notary Public, State of Texas

My commission expires: 3-11-2006

STATE OF TEXAS)
)
COUNTY OF Gregg) ss.

On this 17 day of April, ~~2000~~²⁰⁰², before me personally appeared **ALICE EVELYN LITTLE**, to me known (or who has proven to me on the basis of satisfactory evidence) to be the person described in and who executed the attached *Warranty Deed*, and who acknowledged that she executed said instrument as her free act and deed.



[Seal]

Sandra Comer
(Notary's signature)

SANDRA COMER
(Type/Print clearly notary's name)
Notary Public, State of Texas

My commission expires: 3-11-2006

EXHIBIT "A"

All of that certain parcel of land situate at Keaau, District of Puna, Island and County of Hawaii, State of Hawaii, described as follows:

-PARCEL FIRST:-

LOT 2787, area 1.00 acre, more or less, **BLOCK 7**, as shown on Map 58 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1053 (amended) of W. H. Shipman, Limited.

-PARCEL SECOND:-

An undivided 1/5750th interest in Lots 60, 62, 8297, 8363, 8385, 8387 and 3115 in Block 7, and Lot 1 in Block 10, as shown on Maps 10, 10, 55, 56, 56, 57, 58 and 65, respectively, of said Land Court Application No. 1053 (amended), and Lot 4-B, as shown on Map 2 of Land Court Application No. 1689 of W. H. Shipman, Limited, to be used in common with others entitled thereto for roadway and utility purposes only.

Being the land(s) described in Transfer Certificate of Title No. **505,052** issued to Linda Vivian Little, single, and Alice Evelyn Little, unmarried, as Joint Tenants.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : COLUMBIA CEDAR PRODUCTS INCORPORATED,
a Hawaii corporation

GRANTEE : LINDA VIVIAN LITTLE, single, and ALICE EVELYN
LITTLE, unmarried, as Joint Tenants

DATED : January 30, 1998

FILED : Land Court Document No. 2436992

SUBJECT, HOWEVER, to the following:

-AS TO PARCEL SECOND:-

- (A) -AS TO LOTS 60 AND 62 ONLY:- A right of way in favor of Lot 58, as granted by Deed dated September 24, 1945 filed as Land Court Document No. 104733.
- (B) -AS TO LOT 62 ONLY:- Designation of Easement "29" for utility purposes, as shown on Map 10, as set forth by Land Court Order No. 17102 filed April 24, 1959.
- (C) -AS TO LOT 8387 ONLY:- Designation of Easement "30" for utility purposes, as shown on Map 57, as set forth by Land Court Order No. 17102 filed April 24, 1959.
- (D) -AS TO LOTS 62 AND 8387 ONLY:- Grant in favor of Hawaii Electric Light Company, Inc. dated April 24, 1959, filed as Land Court Document No. 236028, granting easements over said Easements "29" and "30".
- (E) -AS TO LOT 4-B ONLY:-
 - (1) Reservation in favor of the State of Hawaii of all mineral and metallic mines.
 - (2) Lease of right of way for utility purposes in favor of GTE Hawaiian Telephone Company Incorporated dated May 6, 1955, filed as Land Court Document No. 181820, for a term of 30 years from May 6, 1955, and thereafter from year to year until terminated by either party on ninety (90) days written notice.
 - (3) Unrecorded right of way in favor of Olaa Sugar Company, Limited.

- (F) Exception, reservation and power in favor of Hawaiian Paradise Park Corp., its successors and assigns, to grant licenses, easements and privileges to others in, over, across and through said roadway lots for utilities, access and other service purposes, as set forth in Deed dated October 15, 1965, filed as Land Court Document No. 382223.
- (G) -AS TO LOTS 8297 AND 8387 ONLY:- Final Order of Condemnation filed in Civil No. 89-212 in the Circuit Court of the Third Circuit, State of Hawaii, on August 20, 1990, filed as Land Court Document No. 2276014 on December 4, 1995, in favor of the State of Hawaii, condemning a portion of Lots 8297 and 8387 and more particularly described therein. *(Not noted on Transfer Certificate of Title referred to herein).*
- (H) Various waterline easements and grants appurtenant to all lots entitled thereto.
- (I) Rights of others who own undivided interest(s) in the land described herein.

Exhibit D

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L-404

STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

DEC 19, 2005 08:02 AM

Doc No(s) 3368985
on Cert(s) 637,651

I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances.

[Signature]
Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii



/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

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*STL
LL*

After Recordation Return By: Mail Pickup To:

Argent Mortgage Company, LLC
P.O. Box 5047
Rolling Meadows, IL 60008

STC-419665/25050126

TMK:3-1-5-055-062

[Space Above This Line For Recording Data]

Total Pages 20¹⁹

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated December 12, 2005 together with all Riders to this document.

(B) "Borrower" is KALE KEPEKAIO GUMAPAC and DIANNE DRE GUMAPAC, Husband and Wife, As Tenants By the Entirety

Borrower is the mortgagor under this Security Instrument.

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HAWAII-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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(C) "Lender" is Argent Mortgage Company, LLC

Lender is a Limited Liability Company organized and existing under the laws of Delaware Lender's address is 3 Park Plaza 10th Floor Irvine, CA 92614

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated December 12, 2005 The Note states that Borrower owes Lender two hundred ninety thousand and 00/100

(U.S. \$290,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than January 1, 2036 Dollars

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- Adjustable Rate Rider
- Balloon Rider
- VA Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- 1-4 Family Rider
- Other(s) [specify]

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to

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time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in the County of HAWAII:

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF:

Parcel ID Number: 1-5-055-062
15-1716 2ND AVENUE
KAAU
("Property Address"):

which currently has the address of
[Street]
[City], Hawaii 96749 [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

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UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community

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Association Dues, Fees and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA; and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than twelve monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than twelve monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith

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by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law

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requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or

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regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement

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provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - If any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually

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received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any

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Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give Borrower notice of sale in the manner provided in Section 15. Lender shall publish a notice of sale and shall sell the Property at the time and place and under the terms specified in the notice of sale. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Waivers. Borrower relinquishes all right of dower and curtesy in the Property.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

Dianne Dee Gumapac (Seal)
 DIANNE DEE GUMAPAC -Borrower

Rale Kepeiao Gumapac (Seal)
 RALE KEPEIAO GUMAPAC -Borrower

_____ (Seal)
 -Borrower

_____ (Seal)
 -Borrower

_____ (Seal)
 -Borrower

_____ (Seal)
 -Borrower

_____ (Seal)
 -Borrower

_____ (Seal)
 -Borrower

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STATE OF HAWAII,

County of Hawaii

SS:

On this

12th
Day

day of DECEMBER 2005
Month/Year

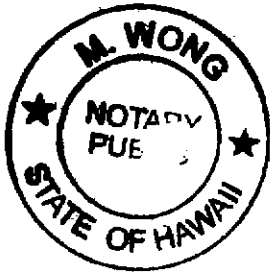
before me personally appeared

KALE KEPEKAIO GUMAPAL AND DIANNE DEE GUMAPAL

to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/her/their free act and deed.

My Commission Expires:

JUN 05 2009



Notary Public, State of Hawaii

M. WONG



ADJUSTABLE RATE RIDER

(LIBOR Six-Month-Index (As Published in the Wall Street Journal)- Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 12th day of December, 2005 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to Argent Mortgage Company, LLC (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

15-1716 2ND AVENUE, KEAAU, HI 96749
 [Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 10.700%. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of January, 2008, and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in the Wall Street Journal. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.



Initials 

Loan Number: 0091447151 - 9504

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing. If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

 (Seal)  (Seal)
 Borrower DIANNE DEE GUMAPAC Borrower KALE KEPEKAIŌ GUMAPAC

 Borrower (Seal) Borrower (Seal)

Loan Number: 0091447151 - 9504

EXHIBIT "A"

All of that certain parcel of land situate at Keaau, District of Puna, Island and County of Hawaii, State of Hawaii, described as follows:

Lot 2787, area 1.00 acre, more or less, Block 7, as shown on Map 58, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1053 (amended) of W. H. Shipman, Limited;

TOGETHER WITH an undivided 1/5750 interest in Lots 60, 62, 8297, 8363, 8385, 8387 and 3115 in Block 7, and Lot 1 in Block 10; as shown on Maps 10, 10, 55, 56, 56, 57, 58 and 65, respectively, of said Land Court Application No. 1053 (amended); and Lot 4-b, as shown on Map 2 of Land Court Application No. 1689 of W. H. Shipman, Limited, to be used in common with others entitled thereto, for roadway and utility purposes only;

Being all of the land described in Transfer Certificate of Title No. 637,651.

Exhibit E

Stewart Title Guaranty Company

SCHEDULE A

Order No.: 25050126

Policy No.: M-9994-8370850

Liability: \$290,000.00

Premium Amount.: \$1,050.00

Date of Policy: December 19, 2005 at 8:02 a. m.

1. Name of Insured:

ARGENT MORTGAGE COMPANY, LLC, a Limited Liability Company, organized and existing under the laws Delaware

2. The estate or interest referred to herein is at Date of Policy vested in:

KALE KEPEKAI O GUMAPAC and **DIANNE DEE GUMAPAC**, husband and wife, as Tenants by the Entirety

3. The estate or interest in the land described in Schedule "C" and which is encumbered by the insured mortgage is:

FEE SIMPLE ESTATE

4. The mortgage, herein referred to as the insured mortgage, and the assignments thereof, if any, are described as follows:

MORTGAGE

Mortgagor: Kale Kepekaio Gumapac and Dianne Dee Gumapac, husband and wife, as Tenants by the Entirety

Mortgagee: Argent Mortgage Company, LLC, a Limited Liability Company, organized and existing under the laws Delaware

Dated: December 12, 2005

Recorded: December 19, 2005

Document No. 3368985

To Secure: \$290,000.00

5. The land referred to in this policy is described as follows:

SEE SCHEDULE C ATTACHED HERETO

Schedule B

EXCEPTIONS FROM COVERAGE

Order No.: 25050126

Policy No.: M-9994-8370850

PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) which arise by reason of:

1. TAXES Tax Map Key: HAWAII 1-5-055-062

Hawaii 2005-2006 TAX ROLL

	2005	VALUE	EXEMPTION	NET
BLDG		144,300	111,800	32,500
LAND		14,600	0	14,600
TOTAL		158,900		47,100

Taxes for the Fiscal Year 2005-2006 are a lien; payable as follows:

1st Installment:	\$130.71	PAID
2nd Installment:	\$130.70	DUE FEBRUARY 20, 2006

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. AS TO LOTS 60 AND 62 ONLY:

GRANT

In Favor of:	Lot 58
Dated:	September 24, 1945
Document No.	104733
Purpose:	Easement for right-of-way purposes over and across a portion of the land herein described

Schedule B

EXCEPTIONS FROM COVERAGE - (Continued)

Order No.: 25050126

Policy No.: M-9994-8370850

4. AS TO LOT 4-B ONLY:

- a) The terms and provisions of:

LEASE OF RIGHT-OF-WAY

In Favor of: Hawaiian Telephone Company, now known as Hawaiian Telcom, Inc., a Hawaii corporation

Dated: May 6, 1955, and thereafter from year to year until terminated

Document No. 181820

Term: 30 years from May 6, 1955, &c

Purpose: Easement for utility purposes over, under, across and through a portion of the land herein described

- b) Perpetual covenants as contained in Deed

Dated: October 15, 1965

Document No. 382223

Re: Reservation in favor of Hawaiian Paradise Park Corp., its successors and assigns, to grant licenses, easements and privileges to others in, over, across and through said roadway lots for utilities, access and other service purposes

- c) Unrecorded right of way in favor of Olaa Sugar Company, Limited, as set forth in Deed

Dated: February 24, 2003

Document No. 2895104

5. AS TO LOTS 62 AND 8387 ONLY:

- a) Easement 29 over and across Lot 62, as shown on Map 10, and Easement 30 over and across Lot 8387, as shown on Map 57, for utility purposes, as set forth by Land Court Order No. 17102, filed on April 24, 1959.

- b) GRANT

In Favor of: Hilo Electric Light Company, Limited, now known as Hawaii Electric Light Company, Inc.

Dated: April 24, 1959

Document No. 236028

Purpose: Easement for right-of-way purposes over and across a portion of the land herein described

Schedule B

EXCEPTIONS FROM COVERAGE - (Continued)

Order No.: 25050126

Policy No.: M-9994-8370850

6. AS TO LOTS 60, 62, 8297, 8363, 8385, 8387, 3115, 1 AND 4-B ONLY:

a) Reservations and exceptions as contained in:

DEED

Dated: July 22, 1964
Document No. 347375
to which reference is hereby made

b) AS TO LOTS 8297, 8363, 8385, 3115 AND 1 ONLY:

QUITCLAIM ASSIGNMENT OF RESERVATION OF RIGHTS

Said Hawaiian Paradise Park Corp., assigns all of their estate, right, title and interest in and to those certain exceptions, reservations and powers to grant licenses, easements and privileges to others in, over, across and through Roadway Lots for utilities, access and other service purposes, to Paradise Hui Hanalike, a Hawaii nonprofit corporation, as set forth by Land Court Order No. 77755, filed on April 2, 1986.

7. The effects, if any, of the Supreme Court opinion rendered on April 25, 1983, Supreme Court Case No. 8699, concerning road maintenance fees for the Hawaiian Paradise Park Subdivision, to-wit:

"Roads-abutting lot owners-duty to contribute to maintenance. Where a subdivision is created consisting of lots and private roadways servicing them and the lot deeds are silent as to any duty to contribute to the maintenance of the roads, owners of lots abutting the roads have a legal duty to contribute to necessary road maintenance."

(NOTE: Not noted on the Transfer Certificate of Title referred to herein.)

8. AS TO THE UNDIVIDED INTEREST IN LOTS 8297 AND 8387 ONLY:

FINAL ORDER OF CONDEMNATION - CIVIL NO. 89-212 - THIRD CIRCUIT COURT

In Favor of: State of Hawaii
Dated: August 20, 1990
Purpose: condemnation of a portion of the lots more particularly described therein

(NOTE: Not noted on the Transfer Certificate of Title referred to herein.)

Schedule B

PART II

Order No.: **25050126**

Policy No.: **M-9994-8370850**

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule (A) is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

NONE

SCHEDULE C

All of that certain parcel of land situate at Keaau, District of Puna, Island and County of Hawaii, State of Hawaii, described as follows:

Lot 2787, area 1.00 acre, more or less, Block 7, as shown on Map 58, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1053 (amended) of W. H Shipman, Limited;

TOGETHER WITH an undivided 1/5750 interest in Lots 60, 62, 8297, 8363, 8385, 8387 and 3115 in Block 7, and Lot 1 in Block 10; as shown on Maps 10, 10, 55, 56, 56, 57, 58 and 65, respectively, of said Land Court Application No. 1053 (amended); and Lot 4-b, as shown on Map 2 of Land Court Application No. 1689 of W. H. Shipman, Limited, to be used in common with others entitled thereto, for roadway and utility purposes only;

Being all of the land described in Transfer Certificate of Title No. 637,651.

ENDORSEMENT 100

Attached to and forming a part of
Policy No. M-9994-8370850
Issued by

Stewart Title Guaranty Company

The Company hereby insures against loss which the insured shall sustain by reason of any of the following matters:

1. Any incorrectness in the assurance which the Company hereby gives:
 - (a) That there are no covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be cut off, subordinated, or otherwise impaired;
 - (b) That there are no present violations on the land of any enforceable covenants, conditions or restrictions;
 - (c) That, except as shown in Schedule B, there are no encroachments of buildings, structures or improvements located on the land onto adjoining lands, nor any encroachments onto the land of buildings, structures or improvements located on adjoining lands.
2.
 - (a) Any future violations on the land of any covenants, conditions or restrictions occurring prior to acquisition of title to the estate or interest referred to in Schedule A by the insured, provided such violations result in impairment or loss of the lien of the mortgage referred to in Schedule A, or result in impairment or loss of the title to the estate or interest referred to in Schedule A if the insured shall acquire such title in satisfaction of the indebtedness secured by the insured mortgage;
 - (b) Unmarketability of the title to the estate or interest referred to in Schedule A by reason of any violations on said land, occurring prior to acquisition of title to the estate or interest referred to in Schedule A by the insured, of any covenants, conditions or restrictions.
3. Damage to existing improvements, including lawns, shrubbery or trees
Which are located or encroach upon that portion of the land subject to any easement shown in Schedule B, which damage results from the exercise of the right to use or maintain such easement for the purposes for which the same was granted or reserved;
4. Any final court order or judgment requiring removal from any land adjoining the land of any encroachment shown in Schedule B.


Wherever in this endorsement any or all the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants and conditions contained in any lease referred to in Schedule A.

For purposes of this endorsement, the words "covenants," "conditions" or "restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection, except to the extent that a notice of a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy and is not excepted in Schedule B.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.


Dated: December 19, 2005 at 8:02 a. m.

**Security Title Corporation, as Agent for
Stewart Title Guaranty Company**



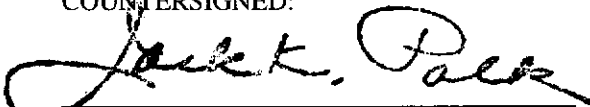
President





Chairman of the Board

COUNTERSIGNED:



Authorized Officer or Agent

ORDER NO. 25050126

ENDORSEMENT 110.9
Attached to and forming a part of
Policy No. M-9994-8370850
Issued by

Stewart Title Guaranty Company

The insurance afforded by this endorsement is only effective if the land is to be used primarily for residential purposes.

The Company insures the Insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

- (a) any environmental protection lien which, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or filed in the records of the clerk of the United States District Court for the district in which the land is located, except as set forth in Schedule B; or
- (b) any environmental protection lien provided for by any state statute in effect at Date of Policy, except environmental protection liens provided by the following state statutes:

NONE

This endorsement is made a part of said policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.


Dated: December 19, 2005 at 8:02 a. m.

**Security Title Corporation, as Agent for
Stewart Title Guaranty Company**



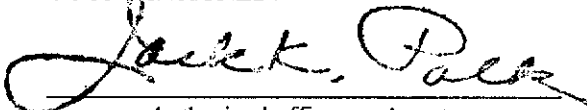
President





Chairman of the Board

COUNTERSIGNED:



Authorized officer or Agent

ORDER NO. 25050126

ENDORSEMENT 116

Attached to and forming a part of
Policy No. M-9994-8370850
Issued by

Stewart Title Guaranty Company

The Company assures the insured that at Date of Policy there is located on said land a **single family dwelling** known as **15-1716 2nd Avenue, Keaau, HI 96749** and that the map attached to this policy shows the correct location and dimensions of said land according to those records which, under the recording laws impart said notice as to said land.

The Company hereby insures the insured against loss which the insured shall sustain in the event that the assurance herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay,

This endorsement is made a part of said policy and is subject to the exclusions from coverage, schedules, conditions and stipulations therein, except as modified by the provisions hereof.

Dated: December 19, 2005 at 8:02 a. m.

**Security Title Corporation, as Agent for
Stewart Title Guaranty Company**



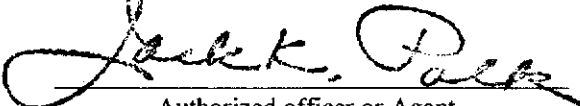
President





Chairman of the Board

COUNTERSIGNED:



Authorized officer or Agent

ORDER NO. 25050126

ENDORSEMENT 100.29
Attached to and forming a part of
Policy No. M-9994-8370850
Issued by

Stewart Title Guaranty Company

The Company insures the insured against loss which the insured shall sustain by reason of

damage to existing improvements, including lawns, shrubbery or trees, resulting from the exercise of any right to use the surface of the land for the extraction or development of the minerals excepted from the description of the land or shown as a reservation in Schedule B.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof..

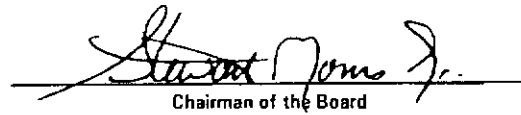
Dated: December 19, 2005 at 8:02 a. m.

**Security Title Corporation, as Agent for
Stewart Title Guaranty Company**



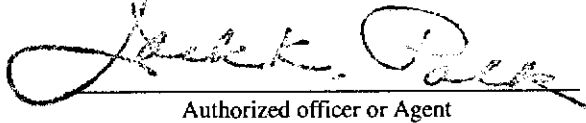
President





Chairman of the Board

COUNTERSIGNED:



Authorized officer or Agent

ORDER NO. 25050126

ENDORSEMENT 111.5
Attached to and forming a part of
Policy No. M-9994-8370850
Issued by

Stewart Title Guaranty Company

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest.
2. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by the changes in the rate of interest.

"Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon

- (a) usury, or
- (b) any consumer credit protection or truth in lending law.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

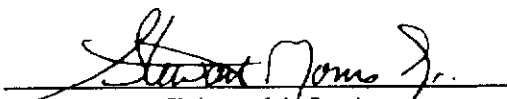
Dated: December 19, 2005 at 8:02 a. m.

**Security Title Corporation, as Agent for
Stewart Title Guaranty Company**



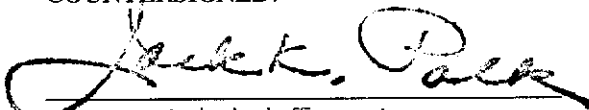
President





Chairman of the Board

COUNTERSIGNED:



Authorized officer or Agent

Exhibit F

Policy of Title Insurance

**Hawaii Standard
Owner's Policy
(1998)**

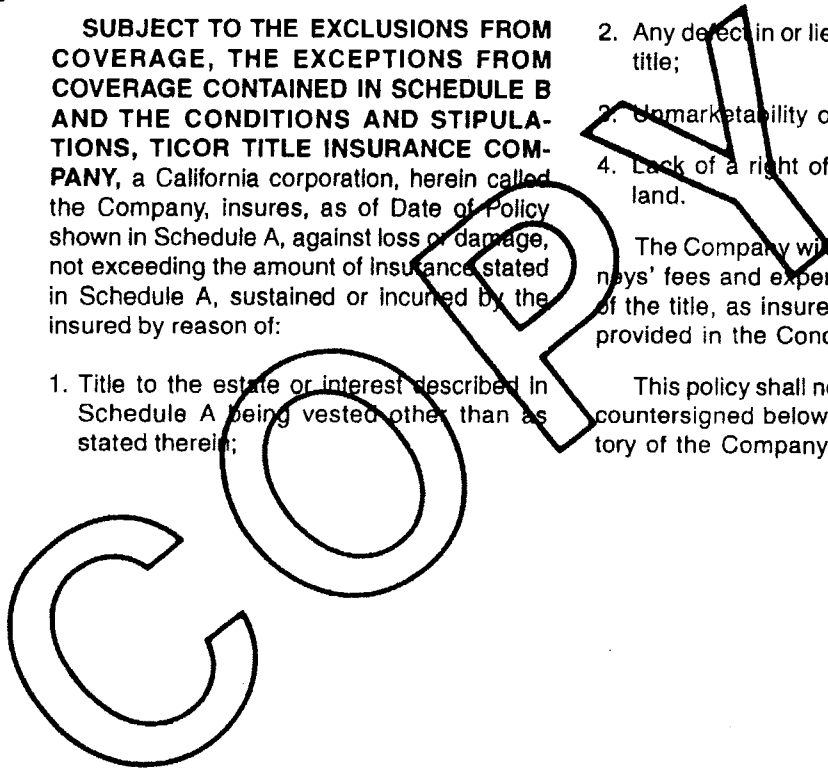
**SUBJECT TO THE EXCLUSIONS FROM
COVERAGE, THE EXCEPTIONS FROM
COVERAGE CONTAINED IN SCHEDULE B
AND THE CONDITIONS AND STIPULA-
TIONS, TICOR TITLE INSURANCE COM-
PANY, a California corporation, herein called
the Company, insures, as of Date of Policy
shown in Schedule A, against loss or damage,
not exceeding the amount of insurance stated
in Schedule A, sustained or incurred by the
insured by reason of:**

2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;

This policy shall not be valid or binding until countersigned below by an authorized signatory of the Company.



Countersigned at Honolulu,
Hawaii, by Title Guaranty
of Hawaii, Incorporated
P.O. Box 3084
Honolulu, Hawaii 96802

TICOR TITLE INSURANCE COMPANY

By

President

Attest

Secretary

Authorized Signatory



Exclusions from Coverage

The following matters are expressly excluded from the coverage of this Policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant or any agent of the insured claimant and not disclosed in writing to the Company by the insured prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.
5. Taxes, assessments or obligations levied or created for any public purpose or improvement, unless the amount thereof has been fixed, is payable and is shown as a lien in the public records at Date of Policy.
6. Any facts, rights, interest or claims which are not recorded in the public records at Date of Policy but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof or of the lessors in any lease of the land.
7. Easements or claims of easements which are not recorded in the public records at Date of Policy.
8. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey or archaeological study would disclose.
9. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
10. Rights or claims of persons or entities other than the insured involving or arising out of: mineral or metallic mines; geothermal resources; water; fishing, commerce or navigation; creation or loss of the land or any portion thereof by accretion, avulsion, erosion or artificial means; persons residing on or otherwise in possession of the land or any portion thereof; trails, roadways or other rights of way, including without limitation any such rights or claims under Chapter 264, Hawaii Revised Statutes.
11. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land, whether furnished before or after Date of Policy and regardless of the legal effective date of any such lien or claim, unless at the Date of Policy such lien or claim was recorded in the public records or filed in the Circuit Court pursuant to Chapter 507, Hawaii Revised Statutes.
12. Any claim arising as a result of the inability or failure of the insured to comply with applicable doing business laws of the State of Hawaii.

Conditions and Stipulations

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, or in Schedule C if not provided for in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in the applicable Schedule, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions from Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants or warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is

adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS: DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves that right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company

to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment in the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle with Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the amount of insurance stated in Schedule A; or

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the amount of insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or Interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT

If the land described in the applicable Schedule consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights

and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-Insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitations, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000, shall be arbitrated only when agreed to by both the Company and the insured; Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision, all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at Tigor Title Insurance Company, Claims Department, P.O. Box 2233, Los Angeles, California 90051.



SCHEDULE A

Premium: \$660.00
Amount of Insurance: \$178,000.00
Date of Policy: February 24, 2003 at 8:01 a.m.
Policy No.: T76-00020391
Agent's No.: 200023300

Hawaii Standard Owner's Policy (1998)

1. Name of Insured:

KALE KEPEKAIO GUMAPAC and DIANNE DEE GUMAPAC, husband and wife,
as Tenants by the Entirety, as Fee Owner

2. Title to the estate or interest in the land is vested in:

THE NAMED INSURED

3. The estate or interest in the land which is covered by this
policy is:

FEE SIMPLE

4. The land referred to in this policy is described as follows:

See Schedule C.

SCHEDULE B

All matters set forth in the paragraphs below the caption "Exclusions from Coverage" on the inside cover of this Policy and the following matters are expressly excluded from the coverage of this Policy and the Company will not pay loss or damage, costs, attorney's fees or expenses which arise by reason thereof.

1. Real Property Taxes have been fully paid up to and including June 30, 2003.

Tax Key: (3) 1-5-055-062 Area Assessed: 1.000 acre

Land Classification: HOMEOWNER

Street Address: 15-1712 SECOND AVENUE, KEAAU, HAWAII 96749

2. -AS TO PARCEL SECOND:-

(A) -AS TO LOTS 60 AND 62 ONLY:- A right of way in favor of Lot 58, as granted by Deed dated September 24, 1945, filed as Land Court Document No. 104733.

(B) -AS TO LOT 62 ONLY:- Designation of Easement "29" for utility purposes, as shown on Map 10, as set forth by Land Court Order No. 17102, filed April 24, 1959.

(C) -AS TO LOT 8387 ONLY:- Designation of Easement "30" for utility purposes, as shown on Map 57, as set forth by Land Court Order No. 17102, filed April 24, 1959.

SCHEDULE B CONTINUED

- (D) -AS TO LOTS 62 AND 8387 ONLY:- Grant in favor of Hawaii Electric Light Company, Inc., dated April 24, 1959, filed as Land Court Document No. 236028; granting easements over said Easements "29" and "30".
- (E) -AS TO LOT 4-B ONLY:-
- (1) Reservation in favor of the State of Hawaii of all mineral and metallic mines.
 - (2) Lease of right of way for utility purposes in favor of GTE Hawaiian Telephone Company Incorporated, now known as Verizon Hawaii, Inc., dated May 6, 1955, filed as Land Court Document No. 181820, for a term of 30 years from May 6, 1955, and thereafter from year to year until terminated by either party on ninety (90) days written notice.
 - (3) Unrecorded right of way in favor of Olaa Sugar Company, Limited.
- (F) Exception, reservation and power in favor of Hawaiian Paradise Park Corp., its successors and assigns, to grant licenses, easements and privileges to others in, over, across and through said roadway lots for utilities, access and other service purposes, as set forth in Deed dated October 15, 1965, filed as Land Court Document No. 382223.
- Said exception, reservation and power was assigned to Paradise Hui Hanalike, a Hawaii nonprofit corporation, by that certain Quitclaim Assignment of Reservation of Rights dated December 18, 1985, as referenced in Land Court Order No. 77755, filed April 2, 1986.
- (G) -AS TO LOTS 8297 AND 8387 ONLY:- Final Order of Condemnation filed in Civil No. 89-212 in the Circuit Court of the Third Circuit, State of Hawaii, on August 20, 1990, filed as Land Court Document No. 2276014 on December 4, 1995, in favor of the State of Hawaii, condemning a portion of Lots 8297 and 8387 more particularly described therein. (Not noted on Transfer Certificate of Title referred to herein)

SCHEDULE B CONTINUED

(H) Various waterline easements and grants appurtenant to all lots entitled thereto.

(I) Rights of others who own undivided interest(s) in the land described herein.

3. MORTGAGE

LOAN/ACCOUNT NO. 1001944-7000064195-0

MORTGAGOR : KALE KEPEKAIO GUMAPAC and DIANNE DEE GUMAPAC,
 husband and wife

MORTGAGEE : MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
 solely as a nominee for FREMONT INVESTMENT & LOAN,
 a corporation organized and existing under the laws
 of California

DATED : February 11, 2003
FILED : Land Court Document No. 2895105
AMOUNT : \$115,000.00

END OF SCHEDULE B

SCHEDULE C

The land referred to in this policy is described as follows:

All of those certain parcels of land situate at Keaau, District of Puna, Island and County of Hawaii, State of Hawaii, described as follows:

-PARCEL FIRST:-

LOT 2787, area 1.00 acre, more or less, BLOCK 7, as shown on Map 58, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1053 (amended) of W. H. Shipman, Limited;

-PARCEL SECOND:-

An undivided 1/5750 interest in Lots 60, 62, 8297, 8363, 8385, 8387 and 3115 in Block 7, and Lot 1 in Block 10; as shown on Maps 10, 10, 55, 56, 56, 57, 58 and 65, respectively, of said Land Court Application No. 1053 (amended); and Lot 4-B, as shown on Map 2 Land Court Application No. 1689 of W. H. Shipman, Limited, to be used in common with others entitled thereto, for roadway and utility purposes only;

Being the land(s) described in Transfer Certificate of Title No. 637,651 issued to KALE KEPEKAIO GUMAPAC and DIANNE DEE GUMAPAC, husband and wife, as Tenants by the Entirety.

GENERAL NOTES

1. There is hereby omitted from any covenants, conditions and reservations contained herein any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin, unless and only to the extent that said covenant (i) is exempt under Chapter 42, Section 3607 of the United States Code or (ii) relates to handicap but does not discriminate against handicapped persons.

Exhibit “4”

COPY

FILED
DISTRICT COURT OF
THE THIRD CIRCUIT
STATE OF HAWAII

2011 AUG 24 AM 7:57

P. ANTIDA

AGARD & KAIAMA, LLC
Keoni K. Agard #2649
Dexter K. Kaiama #4249
Seven Waterfront Plaza
500 Ala Moana Blvd., Suite 400
Honolulu, Hawai'i 96813
Telephone: 545-2922

Attorneys for Defendant
Dianne Dee Gumapac

IN THE DISTRICT COURT OF THE THIRD CIRCUIT

NORTH AND SOUTH HILO DIVISION

STATE OF HAWAII

DEUTSCHE BANK NATIONAL
TRUST COMPANY, AS TRUSTEE
IN TRUST FOR THE BENEFIT OF
THE CERTIFICATEHOLDERS FOR
ARGENT SECURITIES INC.,
ASSET-BACKED PASS-THROUGH
CERTIFICATES, SERIES 2006-W2,

Plaintiff,

vs.

DIANNE DEE GUMAPAC; JOHN DOES 1-
50; AND JANE DOES 1-50,

Defendants.

) DC CIVIL NO. 3RC 11-1-150
) (EJECTMENT)
)
) ORDER: (1) GRANTING DEFENDANT
) DIANNE DEE GUMAPAC'S
) MOTION TO DISMISS PLAINTIFF'S
) VERIFIED COMPLAINT FOR
) EJECTMENT FILED FEBRUARY 9, 2011,
) FILED APRIL 29, 2011 AND (2) DENYING
) PLAINTIFF'S MOTION FOR SUMMARY
) JUDGMENT FILED APRIL 14, 2011
)
)

) Hearing:
)
)

) Date: July 1, 2011
)

) Time: 8:30 a.m.
)

) Judge: Hon. Harry P.N. Freitas
)
)

**ORDER: (1) GRANTING DEFENDANT DIANNE DEE GUMAPAC'S MOTION
TO DISMISS PLAINTIFF'S VERIFIED COMPLAINT FOR EJECTMENT FILED
FEBRUARY 9, 2011, FILED APRIL 29, 2011 AND (2) DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT FILED APRIL 14, 2011**

I hereby certify that this is a full, true
and correct copy of the original on file
in my office.
P. Antida
Clerk, District Court of the Third Circuit,
State of Hawaii

Plaintiff's Motion for Summary Judgment and Writ of Possession filed herein on
April 14, 2011 and Defendant Dianne Dee Gumapac's, Motion to Dismiss Plaintiff's Verified
Complaint for Ejectment filed February 9, 2011, filed herein on April 29, 2011, having come on

for hearing before the Honorable Harry Freitas in his courtroom on July 1, 2011, Peter K. Keegan, Esq. having appeared for Plaintiff and Dexter K. Kaiama, Esq. having appeared for Defendant Dianne Dee Gumapac.

The court having carefully read and considered all the memoranda, declaration and exhibits presented, having heard and considered the oral arguments, and good cause appearing therefore,

IT IS HEREBY ORDERED that:

1. Defendant Dianne Dee Gumapac's Motion to Dismiss Plaintiff's Verified Complaint for Ejectment filed February 9, 2011, filed herein on April 29, 2011 is granted and Plaintiff's Verified Complaint for Ejectment filed February 9, 2011 is dismissed with prejudice as a question of title has been raised divesting this Court of Subject Matter Jurisdiction; and

2. Plaintiff's Motion for Summary Judgment and Writ of Possession filed herein on April 14, 2011 is ~~denied~~. *not*

DATED: Hilo , Hawai'i, August , 24 2011.

HARRY P. FREITAS (SEAL)

HONORABLE HARRY P.N. FREITAS
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

Peter K. Keegan
Attorney for Plaintiff

IN THE DISTRICT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE IN TRUST
FOR THE BENEFIT OF THE
CERTIFICATE HOLDERS FOR
ARGENT SECURITIES, INC.,
ASSET-BACKED PASS THROUGH
CERTIFICATES, SERIES 2006-W2

Plaintiff,

vs.

DIANNE DEE GUMAPAC; JOHN
DOES 1-50; AND JANE DOES
1-50,

Defendant.

CIVIL NO.
3RC11-1-000150

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

before the Honorable Harry Freitas, Judge, District Court
Division, presiding on Friday, July 1, 2011.
(Transcribed from FTR)

HEARING ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.
HEARING ON DEFENDANT'S MOTION TO DISMISS.

APPEARANCES:

PETER KEEGAN
MICHAEL WONG
For Deutsche Bank National Trust Company

DEXTER KAIAMA
For Dianne Gumapac

REPORTED BY: Audrey Tanouye, CSR 225
Official Court Reporter, State of Hawaii
Audrey S. Tanouye, CSR 225
Official Court Reporter, State of Hawaii

1 FRIDAY, JULY 1, 2011

9:13 O'CLOCK A.M.

2 --000--

3 THE CLERK: Going to case number two from the 8:30
4 civil calendar 3RC 11-1-000150, Deutsche Bank National,
5 et cetera versus Dianne Dee Gumapac.

6 MR. KAIAMA: Gumapac.

7 THE CLERK: Gumapac. Thank you.

8 MR. KEEGAN: Peter Keegan on behalf of the
9 Plaintiff Deutsche Bank National Trust Company.

10 MR. WONG: Along with Mike Wong. Michael Wong.

11 MR. KAIAMA: Good morning, Your Honor. Dexter
12 Kaiama on behalf of Dianne Gumapac. Miss Gumapac is not
13 present. But, Your Honor, Mr. Kelly Gumapac who's also
14 on the mortgage is present in the courtroom.

15 THE COURT: I'm just -- I'm looking at the
16 Complaint, I didn't see Mr. Gumapac.

17 MR. KAIAMA: Yes. It's interesting, Your Honor,
18 Mr. Gumapac is not on the Complaint.

19 THE COURT: Any comment as to that, Mr. Keegan?

20 MR. KEEGAN: Ah, just one moment, Your Honor. I
21 need to, ah, review that.

22 Your Honor, if I may request a short recess? I
23 may have hurried this along more quickly than I had
24 anticipated.

25 THE COURT: Okay. Any comment?

Audrey S. Tanouye, CSR 225
Official Court Reporter, State of Hawaii

1 MR. KAIAMA: No objection.

2 THE COURT: Okay, we'll take a recess.

3 MR. KEEGAN: Thank you, Your Honor.

4 THE COURT: If Counsels want to talk you can come
5 back. Up to you.

6 THE CLERK: Court is in recess.

7 (Recessed at 9:15 a.m. and reconvened at 9:34 a.m.)

8 THE CLERK: All rise, court is reconvened.

9 You may be seated.

10 Recalling case number two on the civil calendar
11 3RC 11-1-000150, Deutsche Bank National et cetera versus
12 Dianne Dee Gumapac.

13 THE COURT: Okay. Court notes the presence of Mr.
14 Keegan and Mr. Wong on behalf of Plaintiffs, also Mr.
15 Kaiama on behalf of Defendants.

16 So earlier we were discussing the fact of Mr.
17 Gumapac not being in the paperwork or anything else,
18 where are we at as far as that is concerned?

19 MR. KEEGAN: Well, Your Honor, it appears that at
20 one point Mr. Gumapac did make an appearance but was not
21 added to this case. Ah, based on that, we would submit
22 on the argument. If Plaintiff's Counsel wishes to make
23 -- excuse me, if Defendant's Counsel wishes to make
24 further argument, we would just submit to the Court on
25 that argument.

Audrey S. Tanouye, CSR 225
Official Court Reporter, State of Hawaii

1 THE COURT: When you say "argument" which argument
2 are we referring to?

3 MR. KEEGAN: On his Motion to Dismiss or in
4 opposition to our Motion for Summary Judgment.

5 MR. KAIAMA: Under 12.1 --

6 THE COURT: Okay, so you're not going to address
7 the fact that Mr. Gumapac is or may be on the deed and
8 may have a right to title? And you want me to just
9 address the fact that Ms. Gumapac has been brought into
10 this action and we're just going to address her portion
11 of it?

12 MR. KEEGAN: That's correct, Your Honor. As Mr.
13 Gumapac was never given proper notice under service, we
14 request we move forward in the instant matter.

15 THE COURT: Okay.

16 MR. KAIAMA: Your Honor, I think since the issue
17 has been raised I'm obligated to inform the Court that
18 it's clear -- and it's also attached to their motion,
19 Your Honor, and part of the exhibit -- the mortgage. And
20 the mortgage itself is attached as Exhibit Four. Clearly
21 indicates that Mr. Gumapac was one of parties to the
22 mortgage along with Miss Gumapac.

23 So it's our position, Your Honor, that the -- that
24 the whole process that they went through as far as
25 foreclosing of course is invalid. Mr. Gumapac was never

1 given notice of a foreclosure sale. Never given any
2 notice to evict the property. So that because of his
3 interest in the property, Your Honor, it's our position
4 that they can't move forward with this Complaint against
5 Miss Gumapac and that their Complaint should be
6 dismissed.

7 THE COURT: Any comment, Mr. Keegan? As you can
8 see he is not even touching your motions. He is going
9 all the way back to the initial portion of it.

10 MR. KEEGAN: I see that, Your Honor. I can't
11 speak to whether Mr. Gumapac was given notice, because I
12 don't know at the current time what the status of service
13 was on the Defendants. And that is not at issue and has
14 not been brought forward.

15 I would request, if anything, that the current
16 motions before the Court be ruled on, invalidating the
17 foreclosure. Something that I believe is what the
18 Defendant is referring to right now. I don't believe
19 there is sufficient evidence that he has put forth for
20 his clients indicating that Mr. Gumapac did not receive
21 proper notice of the foreclosure as he was on the
22 mortgage. I don't have the note in front of me either.
23 And I request that Your Honor refrain from ruling on that
24 matter in the instant case, because those are not issues
25 before the Court in a eviction case.

Audrey S. Tanouye, CSR 225
Official Court Reporter, State of Hawaii

1 THE COURT: I was under the impression the deed
2 was attached, or the mortgage.

3 MR. KAIAMA: It is Exhibit Four as part of their
4 exhibits, Your Honor.

5 THE COURT: Okay. If I remember correctly, I want
6 to say was February 24th, 2003, filed or --

7 MR. KAIAMA: According to this Exhibit Four,
8 actually it was recorded on December 19th, 2005, Your
9 Honor.

10 THE COURT: Okay. You have a whole bunch of
11 exhibits so can I ask Exhibit Four in which portion?
12 Which motion?

13 MR. KAIAMA: Oh, actually, Your Honor, it is
14 actually -- what I'm referring to is they provided Your
15 Honor, the Court, an exhibit list.

16 THE COURT: Okay.

17 MR. KAIAMA: And this is the bank's exhibit list.
18 And it is Exhibit Four to their exhibit list.

19 THE COURT: Okay.

20 MR. KAIAMA: And it provides mortgage recorded
21 12/19/05.

22 Your Honor, if I may briefly address the position
23 taken by Mr. Keegan? It is their Complaint, Your Honor.
24 There is nothing in their Complaint which provides --
25 only notice that they provide in their complaints and in

1 their motion papers, including the Notice of Foreclosure,
2 only addresses Mrs. Gumapac. There is nothing in
3 anything -- they haven't provided a single shred of
4 evidence to provide that Notice of Foreclosure was given
5 to Mr. Gumapac, that he received Notice of Foreclosure.
6 In fact, the Notice of Foreclosure again doesn't include
7 his name. Or that he was provided any notice to vacate
8 the premises.

9 THE COURT: Mr. Keegan, would you agree that Mr.
10 Gumapac is on one of the deeds? I'm still trying to find
11 that exhibit, I'm sorry, gentlemen.

12 MR. KAIAMA: If I may, Your Honor, I can approach
13 the bench.

14 MR. KEEGAN: I can provide you a copy, Your Honor,
15 as well.

16 THE COURT: Okay. Either that or you can just
17 tell me whether or not he's on it. I would take your
18 word for it.

19 MR. KEEGAN: Yes, Your Honor, the defendant, ah,
20 Mr. Gumapac is on Exhibit Four submitted in our exhibit
21 list.

22 THE COURT: Okay.

23 MR. KEEGAN: The mortgage.

24 THE COURT: Okay, then --

25 MR. KEEGAN: Excuse me, he was not made a

1 defendant though, as my co-counsel had just pointed out.
2 But he is a co-mortgagee.

3 THE COURT: Okay. Then I'm going to rule that
4 just based on that fact alone, that the question of title
5 exists in this matter. And I'm going to grant the Motion
6 to Dismiss.

7 I'll deny the Motion for Summary Judgment based on
8 the fact that I'm granting the Motion to Dismiss. And
9 that's it.

10 MR. KEEGAN: Thank you, Your Honor.

11 THE COURT: Thank you very much, gentlemen.

12 MR. KAIAMA: Thanks, Judge.

13 THE CLERK: All rise. Court is in recess.

14 (9:40 a.m.)

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STATE OF HAWAII)
COUNTY OF HAWAII)
-----)

I, AUDREY TANOUYE, CSR 225, an Official Court reporter for the Third Circuit Court, State of Hawaii, hereby certify that the foregoing was transcribed to the best of my ability from the proceedings recorded by FTR for the above-entitled cause.

Dated this 30th day of August, 2011.

OFFICIAL COURT REPORTER



AUDREY S. TANOUYE, CSR 225

Audrey S. Tanouye, CSR 225
Official Court Reporter, State of Hawaii

Attachment “D”

Harris “Kona” Bright

P.O. BOX 6557
Hilo, HI 96720
Phone: 808-640-6262
E-Mail: daddykonz@hotmail.com

November 25, 2011

Deutsche Bank National Trust Company
1100 Virginia Drive
Fort Washington, PA 19034

To Whom It May Concern:

When I mortgaged my property at 15-1716 Second Ave., Keaau, HI 96749, to MERS acting solely as a nominee for Homecomings Financial, LLC (formerly known as Homecomings Financial Network, Inc., whom I borrowed \$220,000.00, I was required by Homecomings Financial, LLC, as a condition of the loan, to go to escrow to purchase a loan policy in the amount of \$220,000.00 for the benefit of Homecomings Financial, LLC, should there be defect in title. According to my HUD-1 statement, I paid a premium of \$250.00 for both an owner’s policy and a loan policy with Homecomings Financial, LLC, as the named insured, which I’m attaching as Exhibit “1”.

According to Black’s Law Dictionary, 6th ed., title insurance is a “policy issued by a title company **after searching the title, representing the state of that title and insuring the accuracy of its search against claims of title defects.**” It is an indemnity contract that does not guarantee the state of the title but covers loss incurred from a defect in land titles that would arise from an inaccurate title report. A typical loan title insurance policy, which I’ve attached as Exhibit “2”, states:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the “Company”) insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured [the Lender] by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - a. A defect in the Title caused by
 - i. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - ii. failure of any person or Entity to have authorized a transfer or conveyance;
 - iii. a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, **notarized**, or delivered;
 - iv. failure to perform those acts necessary to create a document by electronic means authorized by law;

- v. a document executed under a falsified, expired, or otherwise invalid power of attorney;
- vi. a **document not properly filed, recorded, or indexed in the Public Records** including failure to perform those acts by electronic means authorized by law; or
- vii. a defective judicial or administrative proceeding.

In March of 2011, I retained Laulima Title Search and Claims, LLC, formerly Hawaiian Alliance, LLC, to investigate the status of my fee-simple title that was acquired from Shuichi Taki and Takako Taki, husband and wife, under document no. 3273864, on certificate no. 278,340, issuance of certificate no. 750,398 in the Hawai'i Bureau of Conveyances. Laulima provides claims packages to be filed with title insurance companies under a lender's and owner's policy.

Laulima investigation identified defects in my fee-simple title that should have been disclosed in the title report done by the title company at escrow, which I paid for and which also formed the basis of the lender's title insurance policy I purchased. Laulima's processor's report is based on the expert memorandum of Dr. Keanu Sai, who has a Ph.D. in political science specializing in international relations and public law. The executive agreements cited by Dr. Sai in Laulima's package was also the topic of Dr. Sai's doctoral dissertation and law journal article published by the University of San Francisco School of Law's *Journal of Law and Social Challenges*, vol. 10 (Fall 2008). Both dissertation and law journal article can be downloaded from Dr. Sai's University of Hawai'i website at www2.hawaii.edu/~anu/publications, as well as other publications by Dr. Sai. The report summarized the defect by stating:

“This claim involves a defect of title by virtue of an executive agreement entered into between President Grover Cleveland of the United States and Queen Lili'uokalani of the Hawaiian Kingdom, whereby the President and his successors in office were and continue to be bound to faithfully execute Hawaiian Kingdom law by assignment of the Queen under threat of war on January 17th 1893. The notaries public in the Hawaiian Islands and the registrar of the Bureau of Conveyances were not lawful since January 17th 1893, and therefore title to the estate in fee-simple described as all those certain parcels of land situate at Keaau, District of Puna, Island of Hawai'i, described as PARCEL FIRST: Lot 1549, area 1.000 acre, more or less, Block 7, as shown on Map 58, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i with Land Court Application no. 1053 (amended) of W.H. Shipman, Limited; PARCEL SECOND: an undivided 1/5750 interest in Lots 60, 62, 8297, 8363, 8385, 8387 and 3115 in Block 7, Lot 1 in Block 10; as shown on Maps 10, 10, 55, 56, 56, 57, 58 and 65, respectively, of said Land Court Application no. 1053 (amended); and Lot 4-B, as shown on Map 2 of Land Court Application no. 1689 of W.H. Shipman, Limited, to be used in common with other entitled thereto, for roadway and utility purposes only, is vested other than Harris Bright.”

The defective notary and registrar of the Hawai'i Bureau of Conveyances are covered risks under section 2(a)(iii) and 2(a)(vi) of the lender's title insurance policy I purchased for Deutsche Bank Trust Company, as the assignee of Homecomings Financial, LLC. Having been apprised of the defect and evidence of the same, I sent a notice by letter on May 24, 2011 to Deutsche Bank Trust Company, as the assignee of Homecomings Financial, LLC, giving notice of the defect in title and for Deutsche Bank Trust Company to file an insurance claim under the lender's title insurance policy I purchased, which I'm attaching as Exhibit “3”. Deutsche Bank Trust Company was notified pursuant to section 3 of the title

insurance policy as well as section 5 of the Uniform Covenants of the aforementioned mortgage agreement, which I'm attaching as Exhibit "4".

3. (*Lender's Policy*) The Insured shall notify the Company promptly in writing...in case Knowledge shall come to an insured of any claim of title or interest that is adverse to the Title or the lien of the insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy... If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

5. (*Uniform Covenants*) In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender.

Subsequent to my letter, your lawfirm that you hired, RCO Hawai'i, LLLC, foreclosed on my property under the power of sale and on June 21, 2011, filed a complaint for ejectment in the District Court of the Third Circuit, Puna Division, civil no. 3RC11-1-661. On July 8, 2011, a Motion to Dismiss was filed by myself, and after the motion was heard the complaint for ejectment and foreclosure was dismissed because there exists a title dispute. On September 28, 2011, your lawfirm re-filed the complaint for ejectment in the Circuit Court of the Third Circuit without any mention that the former complaint being dismissed by the District Court of the Third Circuit on account of a title dispute. THIS IS HARRASSMENT!!!

As the person who purchased the lender's policy for the benefit of Deutsche Bank Trust Company, I am the one who contracted the title insurance company to protect your interest, not by choice, but rather as a condition of the loan. Hawai'i is a lien theory state, which means that I'm still the owner of the property and that Deutsche Bank Trust Company only has a lien on my property. As a result of the defect in title, this has affected my claim to "legal" title, but I do maintain "equitable" title because I did pay valuable consideration to Shuichi Taki and Takako Taki, husband and wife, on May 10, 2005, as aforementioned, as well as maintaining "actual possession."

If I have a defect in "legal" title, the mortgage lien is not enforceable and therefore invalid. To protect the lender in case of this type of situation, I was required by the original lender, Homecomings Financial, LLC, to purchase a loan title insurance policy in escrow or I wouldn't get the loan. The policy covered the amount I borrowed, which was \$220,000.00. When Deutsche Bank Trust Company purchased the loan it also included the title insurance policy I purchased for the protection of Homecomings Financial, LLC. If there is a defect in title, which is a covered risk under the lender's policy, it pays off the balance of the loan owed to Deutsche Bank Trust Company, being the assignee of Homecomings Financial, LLC.

The letter I sent on May 24, 2011 to Deutsche Bank Trust Company, assignee of Argent Mortgage Company, LLC, was done pursuant to section 15 and 20 of the "Uniform Covenants" in the aforementioned mortgage agreement (security instrument).

15. All notices given by a Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail.

20. Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to the Security Instrument or that alleges that the other party has breached any provision

of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action.

Therefore, any judicial action taken by Deutsche Bank National Trust Company without first addressing the notice and taking corrective action pursuant to the “Uniform Covenants” of the mortgage agreement by filing a title insurance claim under the Lender’s title insurance policy I purchased is a direct violation and breach of section 20 of the “Uniform Covenants” and I reserve the right to file a lawsuit for damages.

According to *Foehrenbach v. German-American Title & Trust Company*, 217 Pa. 331, 337 (1907), title insurance insures “against defects, unmarketability, liens and incumbrances as of that date. [The insurance company says], you are in our judgment the owner in fee of the entire interest in this property, and we will back our opinion by agreeing to hold you harmless, up to the amount of the policy, in case for any reason our judgment in this respect should prove to be mistaken.” And in *Falmouth National Bank v. Ticor Title Insurance Company*, 920 F.2d 1058, 1064 (1990), the Court stated:

“The title insurance policy...provided that when presented with a claim of an adverse interest to the insured property, the insurer had the option of pursuing a quiet title action without unreasonable delay, or of paying any loss resulting from the defect. Regarding the timing of payment of the loss, the policy contained precisely the same language as Ticor's policy, namely, that ‘when liability has been definitely fixed . . . the loss or damage shall be payable within 30 days thereafter.’ In a lengthy opinion, the court held that the liability of the insurer was definitely fixed when it refused to take any action to quiet title. Thus, the court held that an offer of payment of the loss was due thirty days thereafter.”

Deutsche Bank National Trust Company has provided me no evidence that it has filed the title insurance claim, and that the insurance company has refuted the evidence provided by Laulima Title Search and Claims, LLC, in particular:

1. providing evidence that the 1893 executive agreements entered into between President Grover Cleveland and Queen Lili‘uokalani mandating the President and his successors in office to first administer Hawaiian Kingdom law (*Lili‘uokalani assignment*) and second to restore the Hawaiian Kingdom government and thereafter the Queen to grant amnesty to certain insurgents (*Restoration agreement*) do not exist;
2. providing evidence that the Hawaiian Islands was annexed by a treaty which would have superseded the aforementioned executive agreements;
3. or providing evidence that the U.S. Congress has any constitutional authority to not only annex a foreign state in 1898 by a so-called joint resolution, but also enact legislation creating the so-called Territory of Hawai‘i in 1900 or the so-called State of Hawai‘i in 1959, since Congressional laws have no extra-territorial effect.

Therefore, any judicial action taken against me regarding my property after you have been notified of the defect constitutes a breach of contract under the “Uniform Covenants” and liable to a lawsuit for damages. And please don’t give me your “unqualified opinion” regarding Laulima’s title report, because the insurance policy I was required to purchase to protect Deutsche Bank National Trust Company as the assignee, *insured the accuracy of the title report* done at escrow and not any other

individual or company's opinion, who would by definition be a third party to the contract. Because if your opinion would suffice, then why was I required to purchase the insurance policy in the first place.

THIS LETTER WILL BE USED AS EVIDENCE OF A BREACH OF CONTRACT LAWSUIT IF YOU FAIL TO FILE THE TITLE INSURANCE CLAIM UNDER THE LENDER'S TITLE INSURANCE POLICY.

Sincerely,

Harris "Kona" Bright

enclosures

cc: RCO Hawai'i, LLC
900 Fort Street Mall, Suite 800
Honolulu, HI 96813

Exhibit “1”

A. Settlement Statement

U.S. Department of Housing
and Urban Development

OMB Approval No. 2502-0265
ESCROW NO. A5-301-0499
OFFICER MARCIA C DE LIMA

B. Type of Loan

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FmHA	3. <input type="checkbox"/> Conv. Unins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower: HARRIS BRIGHT P O BOX 385207 WAIKOLOA HI 96738	E. Name & Address of Seller: SHUICHI TAKI TAKAKO TAKI 7-11 3 CHOME AKITA 010-0951 JAPAN	F. Name & Address of Lender: HAWAII FIRST FEDERAL CREDIT UNION P.O. BOX 446 KAMUELA HI 96743
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G. Property Location: (3)175/046/019 CPR:0000 11TH AVE KEAAU HI 96749	H. Settlement Agent: TITLE GUARANTY ESCROW SERVICES, INC. 235 QUEEN STREET HONOLULU, HAWAII 96813	I. Settlement Date: 5/27/2005
	Place of Settlement: KONA OFFICE 75-170 HUALALAI RD STE C210 KAILUA-KONA HI 96740	

J. SUMMARY OF BORROWER'S TRANSACTION

100 GROSS-AMOUNT DUE FROM BORROWER:	
101 Sales/purchase price	43,000.00
103 SETTLEMENT CHARGES TO BORROWER (LINE 1400)	172,107.66
ADJUSTMENTS FOR ITEMS PAID BY SELLER IN ADVANCE	
107 R.P. taxes 05/27/05 to 07/01/05 @ 64.02/6MO	12.09
108 Maintenance fee 05/27/05 to 12/31/05 @ 135.00/1YR	80.25
120 GROSS AMOUNT DUE FROM BORROWER	215,200.00
200 AMOUNTS PAID BY OR IN BEHALF OF BORROWER:	
201 Initial deposit	1,000.00
202 PRINCIPAL AMOUNT OF NEW LOAN(S)	214,200.00
ADJUSTMENTS FOR ITEMS UNPAID BY SELLER	
220 TOTAL PAID BY/FOR BORROWER	215,200.00
300 CASH AT SETTLEMENT FROM/TO BORROWER:	
301 GROSS AMOUNT DUE FROM BORROWER (LINE 120)	215,200.00
302 LESS AMOUNT PAID BY/FOR BORROWER (LINE 220)	215,200.00

L. SETTLEMENT CHARGES

PAID FROM
BORROWER'S
FUNDS AT
SETTLEMENT

700	TOTAL SALES/BROKER'S COMMISSION		
800	ITEMS PAYABLE IN CONNECTION WITH LOAN		
801	Loan Origination fee 1.00 % ISLAND COMMUNITY L		2,142.00
802	Loan Discount 1.00 % HAWAII FIRST FEDER		2,142.00
803	Appraisal fee to Sevco	572.91 (POC)	
804	Credit Report to Landsafe		15.00
812	Flood Certification Fee to NW Flood		10.00
813	Closing Fees to ICL		550.00
814	Construction Contract to Concrete Specialists		149,584.00
815	Construction Inspection Fee to ICL		900.00
816	Interest Reserve to HFFCU		4,399.31
817	Processing Fee to ICL		650.00
900	ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE		
903	Haz Ins Prem For 01 Yr to State Farm		610.00
1000	RESERVES DEPOSITED WITH LENDER		
1100	TITLE CHARGES		
1101	Escrow fee to TITLE GUARANTY ESCROW		211.98
1108	Title insurance prem to TITLE GUARANTY OF HAWAII (Includes Above Item Numbers: 1102 Abstract of Title or Title Search		250.00
1109	Lender's Coverage 214,200.00		
1110	Owner's Coverage 43,000.00		
1200	GOVERNMENT RECORDING AND TRANSFER CHARGES		
1201	Record'g/filing fee		60.00
	DEED \$ 25.00		
	MORTGAGE \$ 25.00		
	ADDL PAGES \$ 10.00		
1300	ADDITIONAL SETTLEMENT CHARGES		
1301	Transfer fee to HPP OWNERS ASSN		35.00
1302	Personal Loan Payoff to HONDA FINANCIAL SERVICES Loan no. 33604295		10,548.37
	PRINCIPAL BALANCE 10,548.37		
1400	TOTAL SETTLEMENT CHARGES (ENTER ON LINE 103, SECTION J)		172,107.66

The undersigned read and understands the Controlled Business Arrangement Disclosure Statement from Title Guaranty Escrow Services, Inc.

To view this form in a larger text, go to www.tghawaii.com Real Estate Forms Library.

ESCROW INSTRUCTIONS and GENERAL PROVISIONS

The Escrow Instructions and General Provisions (the "Escrow Instructions") under which this escrow will be processed are printed below. Please read them carefully. If you have any questions, please contact your escrow officer. If you want any changes, you must request them in writing. Any requested changes must be received and accepted by Escrow and all other parties to this escrow within ten days of the date of this notice. Otherwise, all of the Escrow Instructions on this page shall govern this transaction.

ESCROW INSTRUCTIONS

To: Title Guaranty Escrow Services, Inc. ("Escrow")

The Parties agree to the sale and purchase, or exchange, of the referenced property.

Escrow will collect and hold all documents and funds delivered to Escrow pursuant to the Contract and the Escrow Instructions. If the Parties have not delivered to Escrow all appropriate and necessary documents, Escrow is authorized to have them prepared for execution. Escrow is authorized to deliver or record, or both, said documents and to apply and disburse the funds delivered to Escrow pursuant to the Contract, these Escrow Instructions and the closing statement, when Escrow has obtained said documents and funds and can obtain title insurance or title reports as designated in the closing statement and the Contract.

TENTATIVE CLOSING STATEMENTS ONLY

The Tentative Closing Statement is based upon a proration of charges as of a specified date and the understanding that all necessary payments will be current to that date by the Parties. If the proration date changes or the necessary payments have not been kept current, Escrow is authorized to close this transaction and to make all necessary payments and adjust all prorations to the date of closing, unless another date has been agreed upon by the Parties.

GENERAL PROVISIONS

1. "Contract" means the agreement (including amendments, if any) received by Escrow pertaining to this transaction. "Escrow" means Title Guaranty Escrow Services, Inc., a Hawaii corporation. "Party" means each Buyer and Seller, and in any exchange transaction, each Principal. Unless otherwise agreed to in writing by the relevant parties, all Notices and communications may be delivered by: U.S. Mail, postage prepaid; hand-delivery; facsimile or other electronic transmission.
2. Time is of the essence in this transaction. Any Party, not being in default, shall have all remedies available in law or in equity against any other Party for such other Party's default. If this transaction is not in a condition to close as and when provided hereunder, or at the time of any extensions made pursuant to the Contract, any Party may, in writing, demand the delivery of any money, property or documents deposited with Escrow by that Party. Escrow shall deliver a copy of such demand to the other Party. Unless Escrow considers itself unable to comply with the demand, or unless the other Party objects to the demand in writing within fifteen (15) days of Notice by Escrow, Escrow may comply with the demand or proceed under paragraph 11, below. If the agreed upon closing date has passed, and Escrow has not received a written demand as provided above, Escrow will continue to process this transaction and close as promptly as practicable.
3. Escrow is required to verify that all deposits have been cleared by the financial institution into which they are deposited before the funds can be disbursed. To avoid delays, deposits should be made by wire transfer or cashiers or certified check drawn on a Hawaii financial institution not less than 48 hours prior to a scheduled disbursement. Funds received in this escrow may be deposited with other escrow funds in any Federally insured Hawaii financial institution. The Parties acknowledge that federal law and regulations limit the amount of insurance on insured deposit accounts to \$100,000 per depositor. Escrow may have other deposit accounts in the financial institution in which the funds for this escrow are deposited. The cumulative effect of other accounts of Escrow may limit the amount of insurance available for the funds deposited in this escrow. The Parties agree that Escrow has no liability in the event of failure, insolvency or inability of a financial institution to pay funds deposited, or interest, upon demand for withdrawal. The sole responsibility of Escrow is to make the deposit.
4. Hawaii law provides that when an escrow depository holds funds in escrow, any interest earned on those funds during the time they are held in escrow shall accrue to the credit of the purchaser in the transaction unless written instructions to the contrary are given to the escrow depository. To defray the costs of special handling and accounting for such interest, an administrative fee of Twenty-five Dollars (\$25.00) will be added to the normal escrow fees, to be paid by the Party to whom the interest is paid. Because in many instances the administrative charge will exceed any accrued interest, unless the Parties otherwise instruct Escrow in writing, the Parties will be deemed to have waived the accrual of interest and these Escrow Instructions will constitute written instructions to Escrow not to open an interest-bearing account for the deposit, in which case the \$25.00 charge will not be applicable and the funds may be placed in a sweep account until needed for the transaction. All interest or earnings on the sweep account will accrue to Escrow. If the Parties instruct Escrow to open an interest-bearing account, the charge will be applicable and the Party to whom interest accrues must supply the applicable Social Security Number or other Tax Identification number. A minimum of two (2) business days will be required prior to closing to withdraw and disburse invested funds.
5. The Parties agree to pay all charges, including the fees of Escrow, incurred in connection with this transaction, even if the transaction does not close. Consent fees and other fees required to be paid in advance in order to process this transaction may be paid by Escrow from funds held in escrow prior to closing.
6. Escrow's sole responsibility shall be to comply with the written instructions given to and accepted by it. Any amendment to these Escrow Instructions must be in writing and accepted by Escrow. If there is any conflict between the Contract and these Escrow Instructions, these Escrow Instructions shall control.
7. Escrow is neither responsible for nor assumes any liability for the obligation of any Party to comply with disclosure requirements under Hawaii law, including without limitation, Haw. Rev. Stat. 508-D, 514A-61, 516-71 and 516D-11.
8. In most instances, each Party's Tentative Closing Statement and Final Closing Statement will differ. Copies of such statements will be furnished to the Party named therein and such Party's real estate agent. The Federal Real Estate Settlement Procedures Act requires that Escrow supply the Buyer's and Seller's closing statements to the Buyer's lending institution.
9. Unless otherwise agreed upon, all prorations and adjustments shall be made as of the date upon which the appropriate documents are recorded. All adjustments and prorations shall be made on the basis of a 30-day month. All disbursements may be made by Escrow's check or by wire transfer. A wire transfer fee of \$20.00 will be charged.
10. The Parties acknowledge that Escrow is not a title abstractor or title insurer. It is the duty of the Parties to determine the condition of title and all physical attributes of the property, including without limitation, any facts which a correct survey or inspection of the property would disclose.
11. If any dispute arises with respect to this transaction, or any demand is received by Escrow and Escrow is uncertain as to its duties hereunder, Escrow may at its sole election and without any liability: (1) await, without taking any action, the determination of such dispute by the Parties; or (2) file a suit in interpleader or institute other action in any court of competent jurisdiction for the purpose of having the respective rights and duties of Escrow and the Parties adjudicated. The Parties shall be liable to Escrow for all costs and expenses, including reasonable attorney's fees, incurred by Escrow in connection with any dispute or legal action.

FINAL HUD-1 SETTLEMENT STATEMENT DATED: 5/31/2005

STATEMENT IS CONTINUED - THE 4TH PAGE ATTACHED HERETO IS A PART HEREOF.

12. To comply with certain Federal and State Withholding Requirements, Escrow will request from the Seller a Non-Foreign affidavit or other exemption form pursuant to the IRS Code (FIRPTA) and a Non-Resident affidavit or other exemption form pursuant to Hawaii law (HARPTA). If FIRPTA/HARPTA payments are to be made by Escrow to the IRS and/or State of Hawaii Department of Taxation, Escrow will prepare the FIRPTA/HARPTA forms to attach to the payments and charge Seller \$25.00 for each FIRPTA/HARPTA form. If the Seller has applied for reduction in the withholding amount and closing is scheduled to occur before the applicable withholding certificate is received, Escrow will prepare its withholding agreement to be signed by Seller, Buyer and broker prior to closing. If the transaction involves payment to a non-resident alien, Escrow may also be required to withhold up to thirty percent (30%) of such payment under Federal law. Escrow recommends that such party consult with a tax consultant as to this matter.

13. If Escrow is instructed to hold funds after recordation, an additional fee of \$25 per month will be assessed on funds remaining in the escrow account after sixty (60) days from the recordation date or such later date as may be agreed in writing by Escrow. If funds are not fully disbursed from any account which Escrow deems dormant, Escrow reserves the right to: (1) give a final Notice to the appropriate party; (2) charge a reasonable processing fee of \$5.00 per month after thirty (30) days from the date of final Notice and deduct that fee from the balance remaining in the dormant account; and, (3) escheat the balance of funds in the dormant account to the State of Hawaii, pursuant to Chapter 523A, Hawaii Revised Statutes. An escrow account is deemed dormant if there is no activity for two (2) years after the later of closing or the last disbursement from the account.

14. Documents required for this transaction may be prepared by an attorney designated by a Party. If Escrow is not instructed as to the attorney to prepare the documents, Escrow will select an attorney. Each party is encouraged to have an attorney review all documents prior to them being signed.

15. These Escrow Instructions and other instructions, agreements, approvals or Notices regarding this transaction may be signed in counterparts, and unless otherwise required in writing by a Party or by Escrow, a facsimile or electronically-transmitted signature or communication as permitted by the Uniform Electronic Transactions Act, shall be as binding and effective for all purposes as the original. Escrow shall have no duty to inquire into or have responsibility for the form, content, due execution, genuineness, validity, sufficiency or enforceability of any agreement, documents, certification, or other papers received by Escrow. The Parties acknowledge that Escrow will assume that all papers received by it have been signed by the proper person, that each such person had capacity and authority to so sign, and that such papers have been signed by the persons whose signatures purport to appear thereon. Escrow shall have no duty to inform any Party regarding any facts which Escrow may have acquired outside this transaction and which concern the property covered by this escrow, unless otherwise requested in writing.

16. Hawaii Law shall govern this escrow. The liability of all Parties shall be joint and several unless otherwise expressly stated. All duties, rights and benefits shall inure to and be binding upon the Parties and their respective heirs, personal representatives, successors and assigns.

PLEASE SIGN BELOW – RETURN ONE COPY TO ESCROW

I have carefully reviewed this Settlement Statement and to the best of my knowledge and belief, it is true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of this Settlement Statement.

Future Mailing Address:

This Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

I certify that copies of this Statement have been mailed or delivered to the Buyer and Seller named herein.

THESE ESCROW INSTRUCTIONS ARE ACCEPTED BY THE UNDERSIGNED.

Settlement Agent
TITLE GUARANTY ESCROW SERVICES, INC.

Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

Exhibit “2”

LOAN POLICY OF TITLE INSURANCE
ISSUED BY



Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection

Countersigned:



Authorized Countersignature

Company Name

City, State



Senior Chairman of the Board

Chairman of the Board

President

File No.:

Covered Risks – Cont.

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage:
 - (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (b) failure of any person or Entity to have authorized a transfer or conveyance;
 - (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (g) a defective judicial or administrative proceeding.
10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
11. The lack of priority of the lien of the Insured Mortgage upon the Title
 - (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either:

- (i) contracted for or commenced on or before Date of Policy; or
 - (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
- (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.
12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.
13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title
 - (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - i) to be timely, or
 - ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

Exclusions from Coverage

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is:
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of
 - i) the amount of the principal disbursed as of Date of Policy;
 - ii) the amount of the principal disbursed subsequent to Date of Policy;
 - iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;
 - iv) interest on the loan;
 - v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
 - vi) the expenses of foreclosure and any other costs of enforcement;
 - vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;
 - viii) the amounts to pay taxes and insurance; and
 - ix) the reasonable amounts expended to prevent deterioration of improvements; but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.
- (e) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;
 - (B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
 - (C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (D) successors to an Insured by its conversion to another kind of Entity;
 - (E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured, or
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;
 - (F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or

guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

- (ii) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.
- (f) "Insured Claimant": An Insured claiming loss or damage.
- (g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.
- (h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
 - (i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
 - (j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
 - (k) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
 - (l) "Title": The estate or interest described in Schedule A.
 - (m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

CONDITIONS – Continued

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks,

memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.
- (i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or
- (ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.
- When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.
- Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
- (i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
- (ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

CONDITIONS - Continued

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of
 - (i) the Amount of Insurance,
 - (ii) the Indebtedness,
 - (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or
 - (iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,
 - (i) the Amount of Insurance shall be increased by 10%, and
 - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.
- (d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

- (a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.
- (b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) The Company's Right to Recover.

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.
- (b) The Insured's Rights and Limitations.
 - (i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.
 - (ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.
- (c) The Company's Rights Against Noninsured Obligors

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights. The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

13. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

CONDITIONS – Continued

**14. LIABILITY LIMITED TO THIS POLICY;
POLICY ENTIRE CONTRACT.**

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. SEVERABILITY.

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

16. CHOICE OF LAW; FORUM.

- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. NOTICES, WHERE SENT.

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Claims Department at P.O. Box 2029, Houston, TX 77252-2029.



Exhibit “3”

HARRIS BRIGHT
PO BOX 6557
HILO, HI 96720

May 24, 2011

Certified Mail

**DEUTSCHE BANK TRUST COMPANY AMERICAS as trustee for RALI2007QS2
1100 VIRGINIA DRIVE
FORT WASHINGTON, PA 19034**

Re: **Demand to File Loss of Title Claim
&
Cancel Foreclosure Proceedings**

Lender's Policy	HARRIS BRIGHT
Paid By:	
Property Covered:	15-1467 11th Avenue, Keaau, Hawaii 96749
Commitment Date:	2/8/11 8:00 am
Coverage Amount:	\$214,200.00
Premium Paid:	\$250.00

Dear Sir or Madam,

I, **HARRIS BRIGHT**, hereby submit my demand that DEUTSCHE BANK TRUST COMPANY AMERICAS as trustee for RALI2007QS2 (hereinafter "DEUTSCHE") file their written loss of title claim concerning Lender's Policy (hereinafter referred to as "LENDER'S POLICY") issued by TICOR TITLE INSURANCE ("TICOR") on 2/8/2011 8:00 AM.

I **respectfully further request that BNY cancel and/or postpone the Foreclosure of 15-1467 11th Avenue, Keaau, Hawaii 96749** to provide DEUTSCHE the opportunity to file its written loss of title claim against TICOR to protect both my rights and interests in the policy.

PLEASE BE ADVISED: Notice of Defect of Title (filed May 18, 2011, in the Bureau of Conveyances, State of Hawai'i, as Doc. No. 4073807 on certificate no. 750,398) in the Subject Property is hereby provided (enclosed). Title Defect, of the Subject Property, is further provided pursuant to the enclosed expert memorandum opinion and exhibits attached thereto.

Accordingly, PLEASE BE FURTHER ADVISED, that failure to cancel/postpone the Foreclosure Auction Sale pending filing and resolution of DEUTSCHE 's written loss of title claim upon TICOR, in order to preserve our and DEUTSCHE 's rights and interests under the LENDER'S POLICY, may result in my filing of a civil action against DEUTSCHE.

Concerning DEUTSCHE 's filing of a written loss of title claim for the LENDER'S POLICY, enclosed please find "Expert Memorandum Regarding the Legal Continuity of the Hawaiian Kingdom and the Fee-simple Title being Vested Other than **HARRIS BRIGHT**, prepared by expert consultant Dr. Keanu Sai and exhibit attachments to Dr. Sai's expert memorandum.

Accordingly, based upon the attached notice(s) of title defect, information and exhibits provided herein, Demand is made upon DEUTSCHE to immediately file their written loss of title claim concerning LENDERS' POLICY issued by TICOR on 2/8/2011 8:00 AM in order to preserve and protect DEUTSCHE 's and my rights under the LENDER'S POLICY.

Thank you for your attention and cooperation on this matter. By copy of this letter to TICOR, NOTICE IS HEREBY GIVEN TO TICOR TITLE INSURANCE of the title defect and demand upon DEUTSCHE to file written loss of title claim.

Sincerely,

HARRIS BRIGHT

pc: TICOR TITLE INSURANCE (w/encls.)
foreclosure attorney. (w/o encls.)
encls.

Exhibit “4”



L-20 STATE OF HAWAII
 OFFICE OF ASSISTANT REGISTRAR
 RECORDED
 NOV 30, 2006 08:01 AM
 Doc No(s) 3520350
 on Cert(s) 750,398



20 1/2 Z5

/s/ CARL T. WATANABE
 ASSISTANT REGISTRAR

After Recordation Return By: Mail Pickup To: Homecomings Financial
 One Meridian Crossing, Ste. 100
 Minneapolis MN 55423
 Loan Number: 047-105107-8

ITC ESCROW # 302-31420 B1
 ITC TITLE # 314215

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100062604710510787

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated NOVEMBER 20TH, 2006 together with all Riders to this document.

(B) "Borrower" is HARRIS BRIGHT, UNMARRIED, AS TENANT IN SEVERALTY

Borrower is the mortgagor under this Security Instrument.

HAWAII-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS
 MFHI7770 (9/06) / 047-105107-8

Form 3012 1/01

VMP -6A(HI) (0005).01

Page 1 of 15

Initials: HB

VMP MORTGAGE FORMS - (800)521-7291



(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the mortgagee under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is HOMECOMINGS FINANCIAL, LLC (F/K/A HOMECOMINGS FINANCIAL NETWORK, INC.)

Lender is a LIMITED LIABILITY COMPANY organized and existing under the laws of DELAWARE
Lender's address is P.O. BOX 808024
PETALUMA, CA 94975

(E) "Note" means the promissory note signed by Borrower and dated NOVEMBER 20TH, 2006
The Note states that Borrower owes Lender TWO HUNDRED TWENTY THOUSAND AND NO/100

Dollars

(U.S. \$ 220,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than DECEMBER 1ST, 2036

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|--|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property located in the COUNTY of HAWAII

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]:

Legal description attached hereto and made a part hereof

Parcel ID Number: 1-5-046-019-0000
15-1467 11TH AVENUE
KEAAU
("Property Address"):

which currently has the address of
[Street]
[City], Hawaii 96749 [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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Form 3012 1/01

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community

Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith

by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law

requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or

regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement

provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually

received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any

Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give Borrower notice of sale in the manner provided in Section 15. Lender shall publish a notice of sale and shall sell the Property at the time and place and under the terms specified in the notice of sale. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Waivers. Borrower relinquishes all right of dower and curtesy in the Property.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

_____ (Seal)
HARRIS BRIGHT -Borrower

Harris Bright

_____ (Seal)
-Borrower

_____ (Seal) -Borrower

_____ (Seal)
-Borrower

_____ (Seal) -Borrower

_____ (Seal)
-Borrower

_____ (Seal) -Borrower

_____ (Seal)
-Borrower

STATE OF HAWAII, *County of Hawaii*

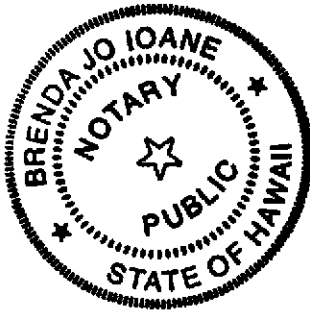
ss:

On this *21st* day of *Nov. 2006*
personally appeared **HARRIS BRIGHT, UNMARRIED, AS TENANT IN SEVERALTY**

2006, before me

to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/her/their free act and deed.

My Commission Expires: *11/17/08*



Brenda Jo Ioane

Notary Public, State of Hawaii

Brenda Jo Ioane

Notary Name

Exhibit "A"

ALL OF THAT CERTAIN PARCEL OF LAND SITUATE AT KEAAU, DISTRICT OF PUNA, ISLAND AND COUNTY OF HAWAII, STATE OF HAWAII, DESCRIBED AS FOLLOWS:

LOT 1549, AREA 1.000 ACRE, IN BLOCK 7, AS SHOWN ON MAP 58, FILED WITH LAND COURT APPLICATION NO. 1053 (AMENDED) OF W. H. SHIPMAN, LIMITED.

TOGETHER WITH AN UNDIVIDED 1/5750TH INTEREST IN AND TO LOTS 60; 62; 8297; 8363; 8385; 8387 AND 3115 IN BLOCK 7; AND LOT 1 IN BLOCK 10; AS SHOWN ON MAPS 10, 10, 55, 56, 56, 57, 58 AND 65, RESPECTIVELY, OF SAID APPLICATION NO. 1053 (AMENDED); AND LOT 4-B, AS SHOWN ON MAP 2 OF LAND COURT APPLICATION NO. 1689 OF W. H. SHIPMAN, LIMITED; TO BE USED IN COMMON WITH OTHERS ENTITLED THERETO, FOR ROADWAY AND UTILITY PURPOSES ONLY.

BEING ALL OF THE PREMISES DESCRIBED IN AND COVERED BY TRANSFER CERTIFICATE OF TITLE NO. 750,398.

ISSUED TO: HARRIS BRIGHT, UNMARRIED

(WARRANTY DEED RECORDED MAY 27, 2005 AS LAND COURT DOCUMENT NO. 3273864 OF OFFICIAL RECORDS.)

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 20TH day of NOVEMBER, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to HOMECOMINGS FINANCIAL, LLC (P/K/A HOMECOMINGS FINANCIAL NETWORK, INC.)

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

15-1467 11TH AVENUE
KEAAU, HI 96749

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in COVENANTS, CONDITIONS, AND RESTRICTIONS

(the "Declaration"). The Property is a part of a planned unit development known as HAWAIIAN PARADISE PARK OWNERS

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3150 1/01 MFCD8055 (08/2006) / 047-105107-8

Wolters Kluwer Financial Services
VMP®-7R (0411).01

Page 1 of 3

Initials: HB



B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

Harris Bright

HARRIS BRIGHT

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Attachment “E”

LAULIMA TITLE SEARCH & CLAIMS, LLC HC2 BOX 9607 KEA'AU, HI 96749 PHONE NO. (808) 982-9020 EMAIL: LAULIMALLC@GMAIL.COM	PROCESSOR'S REPORT	
	REPORT DATE	March 22, 2011
	CLAIM NO.	2011 - 505
	PROCESSOR	MOMILANI GLUSHENKO
	ASSIGNED	March 21, 2011
	INVESTIGATED	March 21, 2011
	POLICY NO.	T74-000049117
RE: HARRIS BRIGHT CLAIM TO A FEE-SIMPLE TITLE	POLICY ISSUED	5/27/2005 AT 8:01 AM
	POLICY	OWNER'S TICOR TITLE INSURANCE COMPANY
	COVERAGE	FEE-SIMPLE TITLE
	AMOUNT	\$ 43,000.00
PROPERTY ADDRESS		15-1467 11 th Avenue, Keaau, Hawaii 96749
DESCRIPTION OF PROPERTY PARCEL FIRST: Lot 1549, area 1.000 acre, more or less, Block 7, as shown on Map 58, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i with Land Court Application no. 1053 (amended) of W.H. Shipman, Limited; PARCEL SECOND: an undivided 1/5750 interest in Lots 60, 62, 8297, 8363, 8385, 8387 and 3115 in Block 7, Lot 1 in Block 10; as shown on Maps 10, 10, 55, 56, 56, 57, 58 and 65, respectively, of said Land Court Application no. 1053 (amended); and Lot 4-B, as shown on Map 2 of Land Court Application no. 1689 of W.H. Shipman, Limited, to be used in common with other entitled thereto, for roadway and utility purposes only, situate at Keaau, District of Puna, Island of Hawaii		
DEFECT IN TITLE SUMMARY: Based upon the documents retrieved from the public records, the claimant's deed of ownership was not lawfully executed pursuant to an executive agreement that mandates the President of the United States to administer Hawaiian Kingdom law. Therefore, claimant has a defect in title.		
TOTAL CLAIM	\$	43,000.00
ENCLOSURES	<input checked="" type="checkbox"/>	Expert Memorandum of Dr. Keanu Sai
	<input checked="" type="checkbox"/>	Notice of Defect in Title filed in the Bureau of Conveyances

HARRIS BRIGHT the insured, retained Laulima, LLC, to do an investigation of their fee-simple title situated at Keaau, District of Puna, Island of Hawaii This claim involves a defect of title by virtue of an executive agreement entered into between President Grover Cleveland of the United States and Queen Lili'uokalani of the Hawaiian Kingdom, whereby the President and his successors in office were and continue to be bound to faithfully execute Hawaiian Kingdom law by assignment of the Queen under threat of war on January 17th 1893. The notaries public in the Hawaiian Islands and the registrar of the Bureau of

Conveyances were not lawful since January 17th 1893, and therefore title to the estate in fee-simple described as PARCEL FIRST: Lot 1549, area 1.000 acre, more or less, Block 7, as shown on Map 58, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i with Land Court Application no. 1053 (amended) of W.H. Shipman, Limited; PARCEL SECOND: an undivided 1/5750 interest in Lots 60, 62, 8297, 8363, 8385, 8387 and 3115 in Block 7, Lot 1 in Block 10; as shown on Maps 10, 10, 55, 56, 56, 57, 58 and 65, respectively, of said Land Court Application no. 1053 (amended); and Lot 4-B, as shown on Map 2 of Land Court Application no. 1689 of W.H. Shipman, Limited, to be used in common with other entitled thereto, for roadway and utility purposes only, situate at Keaau, District of Puna, Island of Hawaii, under document no. 3273864 on Certificate no750,398, filed with the Registrar of the Bureau of Conveyances on May 27, 2005, is vested other than **HARRIS BRIGHT**, because the aforementioned deed of conveyance was not lawfully executed in compliance with Hawaiian Kingdom law.

Sincerely,

A handwritten signature in cursive script that reads "Kale Gumapac". The signature is written in dark ink and is positioned above the typed name and title.

Kale Gumapac
President
Laulima Title Search & Claims, LLC.



Expert Memorandum Regarding the Legal Continuity of the Hawaiian Kingdom and the Fee-simple Title being Vested Other than Harris Bright

March 21st 2011

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

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.



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.

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* 700 (2nd ed., 2006).

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

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 119 (6th ed., 2007).



United States to restore the Hawaiian government as it was prior to the landing of U.S. troops on 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

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 Agreement*. In a report to the President after the investigation was completed, Secretary of State Gresham acknowledged the temporary transfer of the Queen’s

¹⁸ Exhibit A, 461.

¹⁹ 5 Hawai`i 73, 76 (1883)

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



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 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

²¹ Exhibit A, 462.

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.



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 to 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 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,

²⁴ Exhibit A, 464.

²⁵ Exhibit B, 1242.

²⁶ *Id.*

²⁷ *Id.*, 457.

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

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



“[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 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

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 Senate Executive Document no. 13, Fifty-third Congress, second session, *Message from the President of the United States on the Hawaiian Question* (December 18th 1893), 1191.

³⁴ *Id.*

³⁵ *Id.*



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 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

³⁶ *Id.*, 1192.

³⁷ Exhibit B, 1267.

³⁸ *Id.*, 1269.

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



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 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

⁴⁰ *Id.*



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 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

⁴¹ Exhibit B, 1283-1284.

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

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

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

⁴⁵ *Id.*, 397.



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 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

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).

⁵¹ *Id.*

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



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. 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."⁵³ 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.⁵⁴

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, 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*,⁵⁵ 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."⁵⁶ 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

⁵³ KRYSZYNA MAREK, *IDENTITY AND CONTINUITY OF STATES IN PUBLIC INTERNATIONAL LAW* (1968), 102.

⁵⁴ 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).

⁵⁵ United Nations, "Responsibility of States for Internationally Wrongful Acts" (2001), Article 12.

⁵⁶ *Id.*, Article 14(2).



President binds “himself and his successors in office by executive agreements.”⁵⁷ More importantly, the U.S. “may not rely on the provisions of its internal law as justification for failure to comply with its obligation.”⁵⁸

Since 1900, the United States Congress has enacted additional legislation establishing a government for the Territory of Hawai‘i,⁵⁹ and in 1959 transformed the Territory of Hawai‘i into the State of Hawai‘i.⁶⁰ According to Born, “American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction.”⁶¹ In *Rose v. Himely* (1807), the Court illustrated this view by asserting, “that the legislation of every country is territorial.”⁶² In *The Apollon* (1824), the Court stated that the “laws of no nation can justly extend beyond its own territory”⁶³ for it would be “at variance with the independence and sovereignty of foreign nations,”⁶⁴ and in *U.S. v. Belmont* (1937), Justice Sutherland resounded, “our Constitution, laws and policies have no extraterritorial operation, unless in respect of our own citizens.”⁶⁵ 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.”⁶⁶

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 remain binding on the United States under both international law and Federal law. §207(a), 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 responsibilities and functions of government, or of any constitutional or other internal rules or

⁵⁷ QUINCY WRIGHT, *THE CONTROL OF AMERICAN FOREIGN RELATIONS* 235 (1922).

⁵⁸ Responsibility of States, Article 31(1).

⁵⁹ 31 U.S. Stat. 141 (1900).

⁶⁰ 73 U.S. Stat. 4 (1959).

⁶¹ GARY BORN, *INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS* 493 (3rd ed. 1996).

⁶² *Rose v. Himely*, 8 U.S. 241, 279 (1807).

⁶³ *The Apollon*, 22 U.S. 362, 370 (1824).

⁶⁴ *Id.*

⁶⁵ *U.S. v. Belmont*, 301 U.S. 324, 332 (1937).

⁶⁶ Douglas Kmiec, *Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea*, 12 Op. Off. Legal Counsel 238-263, 252 (1988).



limitations.” And §115(b), Restatement (Third), 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.” The United States cannot benefit from the violation of these executive agreements under the doctrine of estoppel.

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.⁶⁷ With regard to real estate transactions, the execution of a deed of conveyance and mortgage under Hawaiian law must first be acknowledged by “the party or parties executing the same, before the Registrar of Conveyances, or his agent, or some judge of a court of record, or notary public of this Kingdom,”⁶⁸ and then recorded in the Bureau of Conveyances, where “all deeds, leases for a term of more than one year, or other conveyances of real estate within this Kingdom shall be recorded in the office of the Registrar of Conveyances (§1262, Compiled Laws).” According to Justice Judd, *Kaaihue, et al., v. Crabbe et al.* (1877),⁶⁹ “The Legislature deemed it advisable that deeds of landed property should be recorded.” “No acknowledgment of any conveyance or other instrument, whereby any real estate is conveyed or may be affected shall be taken, unless the person offering to make such acknowledgment shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance or instrument as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness known to the officer.”⁷⁰ That “no person who is not a subject of

⁶⁷ *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.

⁶⁸ Compiled Laws, Hawaiian Civil Code, §1255.

⁶⁹ 3 Haw. 768, 773 (1877)

⁷⁰ Compiled Laws, Hawaiian Civil Code, 407



this Kingdom shall be eligible to the office of notary public,”⁷¹ and there “shall be a bureau in the department of the Interior to be called the Bureau of Conveyances; and His Majesty shall appoint, upon the nomination of the Minister of the Interior, some suitable person to superintend said Bureau, under the direction of said minister, who shall be styled the ‘Registrar of Conveyances.’”⁷²

All conveyances of real property, whether deeds or mortgages, after January 17th 1893 cannot be considered lawfully executed because the “Registrar of Conveyances, or his agent, or some judge of a court of record, or notary public” were not lawfully vested with the authority to acknowledge the execution of deeds of conveyance and mortgages because they were insurgents and members of the so-called provisional government and its successor the Republic of Hawai`i—not officers of the Hawaiian Kingdom. All conveyances of real property, whether deeds or mortgages, since August 12th 1898, cannot as well be considered lawfully executed because these insurgents were maintained under the Territory of Hawai`i government. Hawaiian Kingdom law was not being administered by the U.S. military command by virtue of the *Lili`uokalani assignment* and article 43, Hague Convention, IV (1907). In effect, this renders all conveyances of real estate and mortgages securing the repayment of loans within Hawaiian territory since January 17th 1893 to the present null and void. The notary public and registrar of the Bureau of Conveyances were not competent to execute all conveyances of real property, whether deeds or mortgages.

Harris Bright’s Claim to a Fee-simple title

On May 10th 2005, Shuichi Taki and Takako Taki, husband and wife, conveyed to Harris Bright, a single man, an interest in fee-simple in and to all those certain parcels of land situate at Keaau, District of Puna, Island of Hawai`i, described as PARCEL FIRST: Lot 1549, area 1.000 acre, more or less, Block 7, as shown on Map 58, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai`i with Land Court Application no. 1053 (amended) of W.H. Shipman, Limited; PARCEL SECOND: an undivided 1/5750 interest in Lots 60, 62, 8297, 8363, 8385, 8387 and 3115 in Block 7, Lot 1 in Block 10; as shown on Maps 10, 10, 55, 56, 56, 57, 58 and 65, respectively, of said Land Court Application no. 1053 (amended); and Lot 4-B, as

⁷¹ *Id.*, §1267

⁷² *Id.*, §1249



shown on Map 2 of Land Court Application no. 1689 of W.H. Shipman, Limited, to be used in common with other entitled thereto, for roadway and utility purposes only, under document no. 3273864 on Certificate no. 278,340, filed with the Registrar of the Bureau of Conveyances on May 27th 2005 (Exhibit C). The aforementioned deed of conveyance was not lawfully executed for want of a competent notary public pursuant to §1267 of the Compiled Laws, and a competent registrar of the Bureau of Conveyances pursuant to §1249 of the Compiled Laws. In the aforementioned deed the notary public and registrar were officers of the government of the State of Hawai`i and not the government of the Hawaiian Kingdom, which is in direct conflict with the *Lili`uokalani assignment*, which mandates the President to administer the laws of the Hawaiian Kingdom and not the laws of the United States to include the laws of the State of Hawai`i, and the *Supremacy clause* under the U.S. constitution, article VI, clause 2.

Hawai`i law is based on the *lien theory* of mortgages—not *title theory* or *intermediate theory*. “Every transfer of an interest in real property or fixtures made as security for the performance of a another act or subject to defeasance upon the payment of an obligation, whether the transfer is made in trust or otherwise, is to be deemed a mortgage and shall create a lien only as a security for the obligation and shall not be deemed to pass title.”⁷³ “Under the title theory, legal ‘title’ to the mortgaged real estate remains in the mortgagee until the mortgage is satisfied or foreclosed[.] ... Under the intermediate theory, legal and equitable title remain in the mortgagor until a default, at which time legal title passes to the mortgagee.”⁷⁴ In *Hawai`i National Bank v. Brian R. Cook*, 99 Haw. 334, 342, the Court stated, “Under the lien theory of mortgages, ‘the mortgagee is regarded as owning a security interest only and both legal and equitable title remain in the mortgagor until foreclosure.’ ... ‘It follows that in Hawai`i the mortgagee’s status is that of a lien holder. The mortgagee is not the owner of the property.’”

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 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. Therefore, title to the estate in fee-simple described as all those

⁷³ Hawai`i Revised Statutes § 506-1.

⁷⁴ Restatement (Third) of Property § 4.1(a) at 278.



certain parcels of land situate at Keaau, District of Puna, Island of Hawai‘i, described as PARCEL FIRST: Lot 1549, area 1.000 acre, more or less, Block 7, as shown on Map 58, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai‘i with Land Court Application no. 1053 (amended) of W.H. Shipman, Limited; PARCEL SECOND: an undivided 1/5750 interest in Lots 60, 62, 8297, 8363, 8385, 8387 and 3115 in Block 7, Lot 1 in Block 10; as shown on Maps 10, 10, 55, 56, 56, 57, 58 and 65, respectively, of said Land Court Application no. 1053 (amended); and Lot 4-B, as shown on Map 2 of Land Court Application no. 1689 of W.H. Shipman, Limited, to be used in common with other entitled thereto, for roadway and utility purposes only, is vested other than Harris Bright. Consequently, mortgages cannot be considered valid if the mortgagor was not vested with title to the real estate mortgaged to secure the promissory note taken out with mortgagee. The mortgagee can claim no superior right to the mortgaged property than the mortgagor can claim, who is still vested with the legal and equitable title. Equitable relief for mortgagee is provided under lender’s title insurance policy purchased by the mortgagor at escrow, and relief for Harris Bright, is provided under owner’s title insurance policy no. T74-000049117, Hawai‘i Standard Owner’s Policy (1998), committed May 27th 2005 at 8:01 am (Exhibit D), and/or breach of warranty against the warrantor of the title.

Keanu Sai, Ph.D.

Exhibit A

APPENDIX II

FOREIGN RELATIONS

OF THE

UNITED STATES

1894

AFFAIRS IN HAWAII



WASHINGTON
GOVERNMENT PRINTING OFFICE
1895

House Ex. Doc. No. 47, Fifty-third Congress, second session.

PRESIDENT'S MESSAGE

RELATING TO THE

HAWAIIAN ISLANDS.

DECEMBER 18, 1893.

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.

Mr. Gresham to Mr. Willis.

[Telegram.]

DEPARTMENT OF STATE,
Washington, December 3, 1893.

Your dispatch, which was answered by steamer on the 25th of November, seems to call for additional instructions.

Should the Queen refuse assent to the written conditions, you will at once inform her that the President will cease interposition in her behalf, and that while he deems it his duty to endeavor to restore to the sovereign the constitutional government of the islands, his further efforts in that direction will depend upon the Queen's unqualified agreement that all obligations created by the Provisional Government in a proper course of administration shall be assumed and upon such pledges by her as will 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. 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.

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.

Should the Queen accept conditions and the Provisional Government refuse to surrender, you will be governed by previous instructions. If the Provisional Government asks whether the United States will hold the Queen to fulfillment of stipulated conditions, you will say, the President, acting under dictates of honor and duty as he has done in endeavoring to effect restoration, will do all in his constitutional power to cause observance of the conditions he has imposed.

GRESHAM.

Exhibit B

APPENDIX II

FOREIGN RELATIONS

OF THE

UNITED STATES

1894

AFFAIRS IN HAWAII



WASHINGTON
GOVERNMENT PRINTING OFFICE
1895

House Ex. Doc. No. 70, Fifty-third Congress, second session.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

Certain further information relating to the Hawaiian Islands.

JANUARY 13, 1894.—Referred to the Committee on Foreign Affairs and ordered to be printed.

To the Congress:

I transmit herewith copies of all dispatches from our minister at Hawaii relating in any way to political affairs in that country, except such as have been heretofore laid before the Congress.

I also transmit a copy of the last instructions sent to our minister, dated January 12, 1894, being the only instructions to him not already sent to the Congress.

In transmitting certain correspondence with my message, dated December 18, 1893, I withheld a dispatch from our present minister, numbered 3, and dated November 16, 1893, and also a dispatch from our former minister, numbered 70, and dated October 8, 1892. Inasmuch as the contents of the dispatch of November 16, 1893, are referred to in the dispatches of a more recent date now sent to Congress, and inasmuch as there seems no longer to be sufficient reason for withholding said dispatch, a copy of the same is herewith submitted. The dispatch, numbered 70, and dated October 8, 1892, above referred to, is still withheld for the reason that such a course still appears to be justifiable and proper.

GROVER CLEVELAND.

EXECUTIVE MANSION, *January 13, 1894.*

Mr. Willis to Mr. Gresham.

No. 3.]

LEGATION OF THE UNITED STATES,
Honolulu, November 16, 1893.

SIR: In the forenoon of Monday the 13th instant, by prearrangement, the Queen, accompanied by the royal chamberlain, Mr. Robertson, called at the legation. No one was present at the half-hour interview which followed, her chamberlain having been taken to another room and Consul-General Mills, who had invited her to come, remaining in the front of the house to prevent interruption.

After a formal greeting, the Queen was informed that the President of the United States had important communications to make to her and she was asked whether she was willing to receive them alone and in confidence, assuring her that this was for her own interest and safety. She answered in the affirmative.

I then made known to her 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. To this, she bowed her acknowledgments.

I then said to her, "The President expects and believes that when reinstated you will show forgiveness and magnanimity; that you will wish to be the Queen of all the people, both native and foreign born; that you will make haste to secure their love and loyalty and to establish peace, friendship, and good government." To this she made no reply. After waiting a moment, I continued: "The President not only tenders you his sympathy but wishes to help you. Before fully making known to you his purposes, I desire to know whether you are willing to answer certain questions which it is my duty to ask?" She answered, "I am willing." I then asked her, "Should 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." She hesitated a moment and then slowly and calmly answered: "There are certain laws of my Government by which I shall abide. My decision would be, as the law directs, that such persons should be beheaded and their property confiscated to the Government." I then said, repeating very distinctly her words, "It is your feeling that these people should be beheaded and their property confiscated?" She replied, "It is." I then said to her, "Do you fully understand the meaning of every word which I have said to you, and of every word which you have said to me, and, if so, do you still have the same opinion?" Her answer was, "I have understood and mean all I have said, but I might leave the decision of this to my ministers." To this I replied, "Suppose it was necessary to make a decision before you appointed any ministers, and that you were asked to issue a royal proclamation of general amnesty, would you do it?" She answered, "I have no legal right to do that, and I would not do it." Pausing a moment she continued, "These people were the cause of the revolution and 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." I then said, "I have no further communication to make to you now, and will have none until I hear from my Government, which will probably be three or four weeks."

Nothing was said for several minutes, when I asked her whether she was willing to give me the names of four of her most trusted friends, as I might, within a day or two, consider it my duty to hold a consultation with them in her presence. She assented, and gave these names: J. O. Carter, John Richardson, Joseph Nawahi, and E. C. Macfarlane.

I then inquired whether she had any fears for her safety at her present residence, Washington Square. She replied that she did have some fears, that while she had trusty friends that guarded her house every night, they were armed only with clubs, and that men shabbily dressed had been often seen prowling about the adjoining premises—a schoolhouse with large yard. I informed her that I was authorized by the President to offer her protection either on one of our war ships

or at the legation and desired her to accept the offer at once. She declined, saying she believed it was best for her at present to remain at her own residence. I then said to her that at any moment, night or day, this offer of our Government was open to her acceptance.

The interview thereupon, after some personal remarks, was brought to a close.

Upon reflection, I concluded not to hold any consultation at present with the Queen's friends, as they have no official position, and furthermore, because I feared, if known to so many, her declarations might become public, to her great detriment, if not danger, and to the interruption of the plans of our Government.

Mr. J. O. Carter is a brother of Mr. H. A. P. Carter, the former Hawaiian minister to the United States, and is conceded to be a man of high character, integrity, and intelligence. He is about 55 years old. He has had no public experience. Mr. Macfarlane, like Mr. Carter, is of white parentage, is an unmarried man, about 42 years old, and is engaged in the commission business. John Richardson is a young man of about 35 years old. He is a cousin of Samuel Parker, the half-caste, who was a member of the Queen's cabinet at the time of the last revolution. He is a resident of Maui, being designated in the directory of 1889 as "attorney at law, stock-raiser, and proprietor Bismark livery stable." Richardson is "half-caste." Joseph Nawaki is a full-blooded native, practices law (as he told me) in the native courts, and has a moderate English education. He has served twenty years in the legislature, but displays very little knowledge of the structure and philosophy of the Government which he so long represented. He is 51 years old, and is president of the native Hawaiian political club.

Upon being asked to name three of the most prominent native leaders, he gave the names of John E. Bush, R. W. Wilcox, and modestly added, "I am a leader." John E. Bush is a man of considerable ability, but his reputation is very bad. R. W. Wilcox is the notorious half-breed who engineered the revolution of 1889. Of all these men Carter and Macfarlane are the only two to whom the ministerial bureaus could be safely entrusted. In conversation with Sam Parker, and also with Joseph Nawahi, it was plainly evident that the Queen's implied condemnation of the constitution of 1887 was fully indorsed by them.

From these and other facts which have been developed I feel satisfied that there will be a concerted movement in the event of restoration for the overthrow of that constitution which would mean the overthrow of constitutional and limited government and the absolute dominion of the Queen.

The law referred to by the Queen is Chapter VI, section 9 of the Penal Code, as follows:

Whoever shall commit the crime of treason shall suffer the punishment of death and all his property shall be confiscated to the Government.

There are, under this law, no degrees of treason. Plotting alone carries with it the death sentence.

I need hardly add, in conclusion, that the tension of feeling is so great that the promptest action is necessary to prevent disastrous consequences,

I send a cipher telegram asking that Mr. Blount's report be withheld for the present, and I send with it a telegram, not in cipher, as follows:

Views of the first party so extreme as to require further instructions.

I am, etc.

ALBERT S. WILLIS.

Mr. Willis to Mr. Gresham.

No. 6.]

LEGATION OF THE UNITED STATES,
Honolulu, November 19, 1893.

SIR: It will be remembered that in connection with the presentation on the 19th of July, 1893, of a cane to Mr. Claus Spreckels, there was an unwarrantable use of the name of Hon. James H. Blount, late envoy extraordinary and minister plenipotentiary at Honolulu.

On yesterday, November 18, Hon. Sanford B. Dole, minister of foreign affairs, transmitted a letter dated July 24, 1893, addressed by him to Mr. Charles Crighton, calling his (Crighton's) attention to the improper and unauthorized use of Mr. Blount's name and asking an apology therefor. He also inclosed Mr. Crighton's answer to the effect that Mr. Blount—

had no knowledge of the preparation of the said cane nor of the presentation thereof to Col. Spreckels, and it was not the intention of the donors of the same to intimate in any way that he (Mr. Blount) was interested or in any way concerned in or cognizant of the said presentation.

I can further assure your excellency, continues Mr. Crighton, that if Mr. Blount deems that any act of discourtesy to him has been committed that nothing was further from our intentions, and at the time we had no idea that such an inference could be drawn from the occurrence, more than could be drawn from Mr. Johnston's list.

I will file these letters in the Department and presume that the matter will end here.

With high regard, etc.,

ALBERT S. WILLIS.

Mr. Willis to Mr. Gresham.

No. 7.]

LEGATION OF THE UNITED STATES,
Honolulu, December 1, 1893.

SIR: I have the honor to inclose herewith a printed statement presented by Hon. S. M. Damon, minister of finance, showing the financial condition of the Provisional Government for week ending November 29, 1893.

With high regard, etc.,

ALBERT S. WILLIS.

[Inclosure.]

TUESDAY, November 23.

The executive and advisory councils met at 1:30 this afternoon, President Dole in the chair. The members present were: Ministers King, Damon, and Smith, and Councilors Hatch, Ena, Brown, Waterhouse, Emmeluth, Tenney, Wilder, Young, Allen, Morgan, and Mendonca. Minister of Finance Damon then presented his weekly report, as follows:

Finance statement for week ending November 23, 1893.

Current account balance.....	\$136,481.84
Loan fund account balance.....	368.89
Total treasury balance.....	\$136,850.73

HAWAIIAN ISLANDS.

1245

Finance statement for week ending November 23, 1893—Continued.

RECEIPTS.

Interior department.....	\$2,988.00	
Customs.....	7,274.25	
Fines, penalties, and costs.....	36.70	
Revenue stamps.....	336.50	
Water.....	375.00	
Post-office.....	600.00	
Taxes.....	2,452.80	
Crown lands.....	850.00	
		\$14,913.25
		<u>151,763.98</u>

EXPENDITURES.

Finance department, salaries, incidentals, etc.....	\$74.25	
Interest.....	3,583.00	
Attorney-general's department.....	50.00	
Road tax—to special deposit.....	256.00	
School tax—to special deposit.....	258.00	
		\$4,221.25
Current account balance.....	147,173.84	
Loan fund account balance.....	368.89	
		<u>147,542.73</u>
		<u>151,763.98</u>
Outstanding bonds.....	2,653,200.00	
Treasury notes.....	40,000.00	
Due postal savings bank and Postmaster-General's notes.....	705,416.95	
		<u>3,398,616.95</u>
Less loan fund balance.....		368.89
		<u>3,398,248.06</u>

Postal Savings Bank memorandum.

Notices this date of withdrawals maturing in November and December, 1893, and January and February, 1894.....	\$31,474.00
Cash on hand, Postal Savings Bank this day.....	29,381.15

Expenses Provisional Government memorandum.

Expenses Provisional Government this date.....	\$159,954.21
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This amount covers all expenses, including military and items not appropriated by the last legislature.

Memorandum cash in treasury outstanding.

Certificates.....	\$284,000.00
Certificates, withdrawn from circulation, and deposited for safe-keeping.....	28,000.00
Cash in treasury to redeem certificates.....	284,000.00
Certificates in treasury to redeem certificates.....	284,000.00
Cash in treasury to redeem certificates.....	284,000.00
	<u>29,381.15</u>
Cash on hand, Postal Savings Bank.....	51,624.03
Road board fund in treasury.....	38,143.48
School board fund in treasury.....	147,542.73
Available cash, as above.....	<u>266,691.39</u>

This was received and placed on file.

Mr. Willis to Mr. Gresham.

[Confidential.]

No. 8.]

LEGATION OF THE UNITED STATES,
Honolulu, December 5, 1893.

SIR: On November 24 the British war ship *Champion* arrived, Capt. Rooke commanding. He has about 250 men. On reaching here a telegraphic order was handed him, which will detain him until the difficulties here are settled.

On Saturday, December 2, the Japanese cruiser *Naniwa Kau*, Capt. Mosi commanding, arrived. She will also remain here until a settlement.

On Friday, November 24, your letter appeared in the Honolulu papers and created a great sensation. Crowds were gathered at all points on the streets discussing the news, but, although the excitement was so intense, I am glad to report that there was not a single breach of the peace. A public meeting was called, for the following night, of all friends of the Provisional Government. The meeting was held, the annexation papers stating that there were 1,600 present and the royalist papers putting the number at between 700 and 800. The speakers were Mr. Hatch, vice-president of the Provisional Government; Z. S. Spaulding, a large sugar-planter, who was, many years ago, U. S. consul here; Mr. W. R. Castle, a member of the advisory council; Hon. A. F. Judd, chief justice of the supreme court, and Mr. W. G. Smith. Mr. Smith is the editor of the *Hawaiian Star*, which holds very advanced views upon annexation and other political questions. I inclose an account of the meeting from the *Hawaiian Gazette*. The meeting quietly dispersed at 8:30 and there was no disorder of any kind.

On yesterday a protest against the use of force by the United States against their persons or property was presented to me by several gentlemen who, like the other 146 signers, still claim allegiance to our Government. One of the gentlemen, the secretary of the American League, claims to represent 150 members of that body. I inclose a printed copy of the protest. It may become necessary, hereafter, to reply to this protest, as many of its signers are officially connected with the Provisional Government.

On the morning of November 29 I received a letter from Hon. Sanford B. Dole, minister of foreign affairs, which letter I inclose, rescinding the privilege heretofore given to Admiral Skerrett, of landing his troops for drilling purposes. On Friday morning, December 1, I acknowledged the receipt of his letter and informed him that I had transmitted a copy of it to Admiral Irwin for his information and guidance.

In the afternoon of November 29 I received a second communication from Minister Dole, inquiring as to the authenticity of your letter to the President and the intentions of our Government in connection therewith. I inclose a copy of Mr. Dole's letter and of my answer. I should have stated that, on the morning when information of your letter was received, President Dole and Attorney-General Smith called upon me, to know what the United States intended to do. I explained to them my inability at present to comply with their request.

Since then active preparations for defense have been going on. The former palace, now known as the executive building, has been fortified by bags of sand, both in front and around the various porticos. Guns and pistols have been placed in the hands of all who are willing to take them, whether American, foreigners, or natives, and herein lies one of the greatest dangers. Many of those who have received

these weapons, like children with a new toy, are eager to use them; lacking in intelligence and self-restraint and having no property interests at stake, they are liable at any moment to break into mob violence. The Portuguese consul-general, a most intelligent and capable man, called here last night to express his great fears that many of his people would become involved in trouble and disaster, as they had been supplied with arms, and, against his protest, mustered into the volunteer service.

There are over 10,000 Portuguese on the islands of whom one-fourth are in Honolulu. There are over 1,000 in this city of military age. The nationality, however, which, in my judgment, is destined to give most anxiety here is the Japanese, and this because of their aspiration for suffrage. Mr. Irwin, a brother of Admiral Irwin, arrived here yesterday from Japan. He has for many years been the minister of this country at Japan, and negotiated most of the contracts now pending. He is here, he tells me, to protect these contracts. He reports the Emperor of Japan as unwilling to interfere with these islands because of the large interests of our Government. When the contract period is over, the Emperor thinks the Japanese should be accorded the right of suffrage, but admits the propriety of a high educational and property qualification. As there are now 22,000 Japanese here every intelligent observer concedes that this question of suffrage will soon be a very important one.

As to the Queen's safety I do not have any fear at present. There is a telephone in my sleeping room and I have authorized her people to call me up at any hour of the night or day. She also has the privilege, as stated in previous dispatches, of coming here or of going on one of our war vessels.

Aside from my communication with her, in regard to her safety, I have had nothing to say to the Queen or to her representatives since the interview reported in dispatch No. 3 of November 14. There have been various newspaper hints as to the fact of the interview, but none as to the subject-matter thereof. I have made further inquiries as to the Queen's understanding of the English tongue, and find that she is perfectly familiar with it, having been a classmate of Chief-Justice Judd and other prominent citizens.

I received your cipher telegram. My telegram to you was purposely indefinite and obscure, for reasons which you doubtless now understand. I send a cipher telegram to-day by the steamer *Oceanic* covering several of the points above set forth.

After a careful study of my instructions and of all the surroundings I felt it to be my duty to take no further step until I heard from you and the President.

With sentiments of profound regard, I am, etc.,

ALBERT S. WILLIS.

A GREAT MEETING.

The drill shed filled with enthusiastic men.—An immense throng turns out.—The people's voice is raised in indignant protest against Cleveland and Gresham.—Prominent men thrill a vast audience with their patriotic utterances, and show the fallacy of restoring monarchy.—Text of the speeches in full.

Enthusiasm, cheers, indignation at Gresham's late action, American patriotism, and men with their feelings strung up to the highest pitch of excitement, were the features of Saturday evening's mass meeting. Over 1,200 men were present, and not a dissenting voice among them; men who were not only ready and willing, but anxious to express their sentiments on the question now so near the hearts of all good Americans.

An immense crowd was expected and an immense crowd came. By 7:30 o'clock the hall was crowded and from that time till 8:30 many others came in. When the meeting was over the surging crowd of humanity quietly melted away, each one talking to his companion, whether friend or stranger, about the situation.

On one side of the hall a platform had been erected for the use of speakers. On it were seated Vice-President F. M. Hatch, Col. Z. S. Spalding, W. R. Castle, Chief Justice A. F. Judd, P. C. Jones, W. C. Wilder, and W. G. Smith.

F. M. Hatch, president of the Annexation Club, was the first speaker, and he opened the meeting with a rousing speech. He said:

FELLOW CITIZENS: You have been invited to meet to-night to consider our present political situation. We are confronted by the declaration of Secretary Gresham that royalty must be restored and our Government destroyed. A kind Providence has given us this opportunity to be heard before final action will be taken upon this issue. At present we are proceeding merely upon the newspaper reports which have been received here and which certainly we have a right to discuss. We do not know what action will be taken by the President or by Congress. Certainly any action taken by the Congress of the United States of America cannot be resisted by anybody in this community. Let us not be misunderstood or misrepresented by a hostile press; we do not meet here to-night to defy the power of the United States, that would be absurd, gentlemen, nor to villify those at present in charge of the Government of the United States. [Cries of "Hear! Hear!" and applause.]

But we meet with the hope that our words will be heard by Congress before action is taken by that body. There are certain features in the letter of Mr. Gresham to the President which show that he is proceeding upon a false assumption. Let us hope that the distinguished Secretary has been misinformed up to this date. It is certainly our prerogative to point out the false assumptions and to challenge them. Now, chief among those false assumptions is the one which seems to underlie the whole letter, that there has been submitted to the arbitration of the President of the United States the question whether or not we had a right to establish a government in this country. Gentlemen, I challenge that assumption. [Great applause, cheers, and cries of "you're right."] The assumption is false in every respect. [Cheers and applause.]

Let me briefly point out why. Two parties can make a contract, but it requires the consent of three to make a valid arbitration—that of the two parties in interest and the arbitrator. The parties must clearly define the subject-matter of the arbitration. It is absurd to contend that there could be any arbitration by inference or imputation. First, has there been any issue framed; has the Provisional Government submitted to the decision of anybody its right to exist? [Cries of "No!" "No!"] Not one word or one act can be produced in support of that contention. Gentlemen, from the nature of things, a government which started in revolution, though now the government *de jure* as well as *de facto*, could not submit the question of the legality of its existence to any arbitration because its right lay in its might. Having satisfied our consciences as to the justness of our cause we depend upon our might, and are answerable to no other power. [Applause.]

I brand as false the claim that we have put in issue the question whether or not we were proceeding legally or not in overturning a corrupt and rotten monarchy. [Great applause, cheers, and cries of "Hear!" "Hear!"] Second, has the President of the United States, up to this point, pretended to have been acting in a judicial capacity? I say his acts do not justify that assumption. An arbitrator or judge would not interfere with the existing status of the parties. The President of the United States immediately upon gaining his seat lowered the American flag and thereby changed the status of the parties. [Cries of "Hear!" "Hear!"] That was not the act of a judge, gentlemen. Again, has he notified anybody that he was proceeding with a judicial investigation? Has he given any notice that a hearing would be had on such a date? Has he notified anybody the witnesses were being examined? Has he given anybody an opportunity to cross-examine those witnesses or to confront them? Has he given anybody on our side an opportunity to cross-examine those witnesses or to confront them? Has he given anybody on our side the opportunity to be heard? [Cries of "no, no; he never has!"]

Now, we do not need the legal knowledge of that distinguished judge, who is now Secretary of State, to know that no arbitration could stand for a moment in law, however insignificant the matter, which was conducted *ex parte*, without an opportunity to be heard; without an inspection of the evidence which has been produced, or opportunity to cross-examine the witnesses. How was the late arbitration conducted in Paris? Did a number of gentlemen get together on the Bering Sea question and in private decide upon that matter? Did they send a private agent off to Bering Sea to look about and scratch the back of the seals [laughter], interview the neighbors and make a report? [Laughter, cheers, and applause.]

Gentlemen, it can hardly be contended that the Provisional Government and we representing the supporters of that Government have submitted our right to

exist to Col. James H. Blount, of Georgia. [Applause.] The President of the United States had the undoubted right, so far as we were concerned, to examine into the status here, the situation of the country, as bearing upon the question whether or not he should continue the negotiations of union pending when he took his seat as President. That was ostensibly the object for which Col. Blount was sent to these shores. We insist that up to this point there has been no judicial investigation in which both parties have been given the opportunity to be heard. [Applause.] And again, as showing conclusively the utter absurdity of the position that this has been an arbitration, could an arbitration of such a nature be possible when the Government of the United States had a treaty pending before it—between it and the power which it is charged was submitting its right to exist to the decision of one man? [Cries of "No, no!"]

We were a power *de facto* then; we were recognized by certain great powers of the world; which made us a power *de jure*, and we were a power having treaty relations with the United States of America. [Applause.] A treaty had been negotiated which bound the Executives of the two nations at the moment President Cleveland took his seat. That treaty awaited ratification to make it final, but it nevertheless was a treaty binding the Executive. Now, gentlemen, I challenge the right of the Chief Executive of that great nation, of his own mere motion, to undo the act of any of his predecessors. [Great applause.] Congress may do it; Congress has the full power; but Grover Cleveland has no more right, legally or morally, to undo the act of Benjamin Harrison than he had to undo any act of Abraham Lincoln. [Great applause and cheers.]

But waiving all those considerations, there remains this fundamental one, that no court of arbitration would have the right to ignore the great question at issue; that is, whether or not Liliuokalani had violated the constitution; had thrown it to the dogs, and had put herself beyond the pale and protection of the law. To ignore all that and decide this great issue upon the petty technicality as to whether or not Mr. Stevens recognized the power of this community five minutes too soon or not, was not in the power of a judge. [Great applause, and cries of "You're right."] I repeat, there has been no submission to arbitration. Let us, therefore, challenge all false assumptions, gentlemen, and let that challenge go on record. Let us hold the President to the true issue, and then if the legally constituted power of the United States, the power which has the right under the Constitution to declare war, overpowers us, we will go down with our colors flying, and with no misrepresentation possible. Let it be known to the world that if that event takes place it will be because the United States has exercised its power, but not its right. Let us hope that the showing we can make will have the effect upon Congress in shaping its course, and that it will also have its effect upon the distinguished Secretary of State and the Chief Executive of the American Nation. [Great applause.]

No. 203.

W. R. CASTLE.

W. R. Castle was the next speaker. His speech follows:

FELLOW-CITIZENS: We come here to-night to voice our indignant protest. [Cheers, and cries of "Hear! Hear!"] It is well, upon great occasions, for people to assemble and express their united voice, as this meeting to-night will speak. Great occasions demand great meetings like this. The history of the world gives us many memorable instances. The history of Hawaii has shown us that when a great occasion demanded, a public assembly was called, and the voice of that assembly has been listened to. When the arrogance of the monarch, Kalakaua, became too great, the mass meeting of 1887 met, and its voice was heard, and the Monarch yielded.

That monarch proved false. His successor has followed in the same footsteps. The people have been patient; we have waited, we have hoped for better things; but when the attempt was made to sweep our rights from under our feet, to take away the liberties of the subject, the result was the mass meeting of January 16, 1893, and the voice of that meeting, as expressed, resulted in the downfall of the monarchy and in the establishment of the Provisional Government. [Cheers.] The Provisional Government, gentlemen, represents you, and no one else. [Applause.] As it was said by one of the leading men of the United States recently, a few people went on the ships in Boston harbor and threw some tea overboard. Had the question been submitted to the people of the colonies at that time: "Shall the colonies separate from Great Britain?" a great majority of the people of the united colonies would have said no. They were afraid to step in the dark.

I believe the same is true here. We know that the native population of Hawaii was afraid of what seems to them one step in the dark; but the time will come when they will thank God that there were people willing to risk their lives, their property, their all to establish in Hawaii true liberty. [Great applause and cheers.]

Fellow citizens, Hawaii tends towards one goal and only one; that is, union with its mother across the water. [Great applause.]

If to-day the progress of Hawaii is arrested, is delayed, it is simply delay for a short time. We shall go on, and the time will come, and most of us here will see that time, when Hawaii will rest secure in the bosom of its great and good mother. [Cries of "Hear!" cheers and applause.] In olden times there was a man whose wisdom led him to declare that the world was round; that the world went round the sun; that the stars revolved in their courses, and he was met by the mighty power of the Roman Catholic Church, which declared that he was wrong. Gentlemen, did that make any difference with the facts; did that make any delay in the revolving of the spheres? Can Secretary Gresham stop the onward progress of Hawaii? [Cries of "Never!" and applause.] You sent a commission to Washington to ask that Hawaii might be admitted to the Union.

What was the response of the great heart of that people when we went there? The people welcomed us with a thrill throughout the country from one end to the other. [Applause.] And we went on and were welcomed in Washington. But our enemies, of course, have been alert—they have filled the ears of the present administration in Washington with falsehood; they have stuffed the ears of Secretary Gresham, perhaps of the President, with lies as to what is taking place here. Do they know the facts? We are bound to believe that Secretary Gresham and the President of the United States are trying to execute justice; are trying to do what is right. Whether they are doing it, we know, not they. [Cries of "Hear! Hear!" and applause.] They do not know what the facts are, but we do know, and now it is proposed to take away from us the liberty which we have gained. [Cries of "No! No! They never will do it."]

It is proposed to restore the tottering throne, the monarchy of Hawaii. [Cries of "They can't do it! Never!"] Who proposed to do that? The people of the United States? [Cries of "No! No!"] It is proposed by Secretary Gresham; it is proposed by the President; but the people have spoken. What has been their voice? The people of the United States have, with one accord, voiced our sentiments in favor of liberty. Gentlemen, after the remarks of the president of the Annexation Club it is perhaps unnecessary to dilate any further on the constitutionality of the proposed proceeding of the President of the United States.

In all my reading I fail to find anywhere that the President of the United States is authorized to begin a war, and this proposition to restore the Queen to the throne of Hawaii, if carried out, will be an act of war. Then let us stand firm in our right, and if such a step is taken let him be impeached before the Senate of his country. [Cheers and applause.] Let me call your attention to just one specimen of truthfulness in that report. Mr. Gresham tells the President that the people of Hawaii dare not rise to overthrow the present Government, because they will meet the armed forces of the United States. The President of the United States sent out here his commissioner, his "paramount commissioner" [laughter], and the first act of that commissioner was to take down the American flag. Then he stood by to see us tumble.

Well, gentlemen, we didn't tumble worth a cent. [Laughter.] That taking down of the flag was an invitation, and it was so understood by the people of this country, to overturn the best government this country ever had. [Cries of "Hear, hear!" and "It didn't do it!"] The paramount commissioner waited to see the result, and no such result following, thereupon issued his proclamation, and again invited the people to overthrow this Government. Was not the fact of the flag being taken down known to Secretary Gresham? Has not the proclamation that Commissioner Blount issued in Honolulu, inviting rebellion, inviting the overthrow of this Government, threatening the dire vengeance of the United States upon any and all Americans who assisted us—has not that been published broadcast from one end of the United States to another? Has not Secretary Gresham read that proclamation until he knows it by heart?

The second invitation by the commissioner of the United States to overturn the Government failed in its object, and now the Secretary of the United States blinded, I believe, by false information, again proposes to overturn the Government established by the people of this country. [Cries of "Never!" "He won't do it!"] He proposes to take that position and assumes that the people of this country will not oppose it. [Cries of "He can't do it!"]

Gentlemen, the time is coming when we will see that glorious flag, that emblem of the truest liberty the world knows, floating over our heads—the flag of this country. [Great applause and cheers, and a voice in the crowd shouted: "What is the matter with putting it up there now and keeping it there?"] Gentlemen, the people of the United States wish to hear our voice, they wish to hear what we have to say upon this subject, and I hope that the next vessel that goes to the coast will bear an unmistakable voice from us to-night. At the request of the president of this association, I will now offer the following resolution, which I hope will be adopted without one dissenting voice:

Resolution.

Resolved, That we have read with surprise and regret the recommendation of the Secretary of State of the United States to the President, to restore the monarchy lately existing in Hawaii.

Resolved, That we condemn the assumption of the Secretary that the right of the Provisional Government to exist was terminated by his refusal to re-submit to the Senate the treaty of Union pending between the two countries; and also his assumption that the Provisional Government had at that very time submitted the question of its continued existence to the arbitrament of the President or of any other power.

Resolved, That we support to the best of our ability the Provisional Government, in resisting any attack upon it which may be made contrary to the usage of nations.

Z. S. SPALDING.

Mr. Castle was followed by Col. Z. S. Spalding, the speaker of the evening. His remarks were interrupted many times by cheers and applause. He said:

FELLOW CITIZENS: The State Department at Washington having recently made public some of the ancient history of these islands, in which they did me honor of proving my being "an annexationist" as far back as 1868. [Cries of "Good boy!" and cheers.] I feel that I am entitled to attend this meeting. [Cries of "Hear, hear!"] And I also feel that it was no matter to be ashamed of at that date, when I had the honor of being the representative of the great American Republic at these Islands, it is still less my desire now to repudiate those sentiments or falter in my allegiance to the doctrine so ably upheld by, and so intimately connected with the names of Webster, Seward, and Blaine. [Great applause.]

I have great respect for the honorable gentleman who now holds the portfolio of the State Department at Washington. He and I were two humble units in the great mass of loyal men who helped to save the integrity of the Union in the dark days of the civil war. [Cries of "hear, hear."] I can forgive almost any weakness in the judgment of a man whose heart and hand were on the right side in that bloody strife, but I confess it requires a good deal of charity to overlook the proposition that the same spirit which in 1861 animated the defenders of that Christian civilization and advancement, by means of which the United States have outstripped the world, shall now take a back seat or march to the rear, and leave the work of nearly a century of devoted hearts and willing hands in the enlightenment of this people and the improvement of this country to be destroyed by the ruthless hand of superstition and ignorance. [Cheers and applause.]

It is not my intention to measure swords with the honorable Secretary in the discussion of facts relating to the establishment of the present Government. That it was established and has since been maintained in the interests of the whole country and for the purpose of giving the whole people the benefit of an honest and able administration of its affairs is, in my opinion, beyond dispute. I publicly declare that the newspaper statement attributed to Claus Spreckels, to the effect that "under the management of the Revolutionary Government business on the islands has become depressed * * * and would have continued to diminish as long as the Government had existed," etc., is not borne out by the facts. [Applause.]

If Mr. Spreckels's plantations have not been more remunerative during the past year than for any year since the passage of the McKinley bill it has been on account of the dry weather, and not from any fault of the Provisional Government. [Laughter and applause.] Mr. Jaeger is credited with saying for publication, "the Provisional Government has little to commend it. It could not long endure if left to itself." Such statements would have little effect were the parties uttering them known to the people who read their utterances. [Laughter.] I have lived in this country quite as long as Mr. Jaeger, and I challenge any man to name a cabinet during the last twenty-five years the members of which were the superiors, if indeed the equals, of the men who now hold the various offices under the Provisional Government. [Cheers and applause.]

Now, why are we annexationists? I quite agree with my friend, Mr. Spreckels, that under the conditions he names and fears my business as a sugar-planter would not be benefited by having this country come under the laws and restrictions of the United States regarding Chinese and other labor. [Laughter.] If I owned the whole country, and belonged to the sugar trust, I think it very likely I would not want to be annexed. [Laughter.] But, here again, as I am only a unit, and as I believe the future welfare of the country would be better assured by annexation, I am willing to take my chances under the Stars and Stripes, especially as I believe such union would prove a benefit to the country from which we on these islands have drawn all our support. [Great applause.]

We are here this evening to consider the publication of the views of the Secretary

of State, at Washington, and perhaps decide the question as to whether or not we shall give up the idea of annexation. [Cries of "no, no, never."] If the opinion expressed by the honorable Secretary of State could be considered as the voice of the people of the United States, I should advise that we save our breath to cool our porridge. But from the somewhat forcible opposition expressed by the press and public, I am led to believe that the Secretary found the snow coming down the side of the mountain very rapidly after his letter was made public. [Laughter and applause.] Therefore, I am forced to give my opinion that it would be unwise and unadvisable to give up the fight before the back countries are heard from. [Here a voice in the crowd shouted: "Let us give up our guns hot, and cartridge belts empty." Cheers and applause.]

Here I must beg your indulgence for a personal explanation. Secretary Gresham says in his letter: "Mr. Blount states that while in Honolulu he did not meet a single annexationist who expressed his willingness to submit the question to a vote of the people; he did not talk with one on that subject who did not insist that if the islands were annexed suffrage should be so restricted as to give a complete control to the foreigners or whites, while representative annexationists have repeatedly made similar statements to the undersigned." I had the honor, while in Washington, of an interview with the honorable Secretary, and was asked by him to give my views upon the matter quoted. My reply was, that while I did not consider it proper to submit the terms of a treaty to the people before the treaty was made in Hawaii any more than in the United States, I was, and am perfectly willing to say that under the Constitution and laws of the United States, and especially under such restrictions as the representatives of the United States Government might themselves see fit to make, I would allow every native voter with the ordinary qualifications to vote at any and every election to be held. [Applause.]

I may not have been classed with the "representative annexationists" by the honorable Secretary, but as I had been called upon and had given him my opinion, I object to his wholesale denunciation of "annexationists" under the charge that they would rob the natives of any rights natural to them under the circumstances. [Cries of "Hear, hear!" and "Good boy!"] When the time comes for reestablishment of the right of suffrage in this country the native population may depend upon the annexationists to demand for them the privileges of republican citizenship as fully certainly as granted through the great political party to which the honorable Secretary belongs by the grand old State of Mississippi to its citizens. [Laughter and applause.]

I further object to the position taken by the honorable Secretary in the assumption of the right on the part of the President of the United States to arbitrate between the present Government of these islands and any party whomsoever without being specially invited to such arbitration by this Government. [Cries of "Hear!" "Hear!"] And I heartily concur with the resolution you have passed denouncing the assumption by the Secretary of State at Washington, if we are right in our interpretation of the language ascribed to him, that the Provisional Government of Hawaii, or its powers, terminated with his advice to the President—that the treaty of annexation be not returned to the Senate. [Applause.] The Provisional Government was created (to use the Secretary's own words) "To exist until the terms of the union with the United States have been negotiated and agreed upon." So far, the two Governments have fully "negotiated" the terms of union, but no official agreement has been reached. When either party gives notice to the other of failure to agree, it will be, I think, time enough for the Provisional Government to decide whether such failure is positive and complete, or only temporary, and to act as may seem best for the interests of the people it serves. [Cries of "Hear!" "Hear!" and applause.]

At present I can not accept the opinion expressed by the honorable Secretary of State as the decision or will of the people of that great Republic which for nearly a century has fostered the growth upon these islands of an American sentiment that to-day, in its devotion to the stars and stripes, may challenge the loyalty of even the honorable Secretary himself. [Cheers and applause.] Hawaii is the one spot in all the world outside the strict boundaries of the United States where "Americanism" has grown and flourished even under the blighting influences of an effete monarchy. [Great applause.]

Do you ask how this has been accomplished? I answer, through the kindly influences of that great Republic which has been to these islands a "creator bounteous and benign." By the example and precepts of her missionaries she has let in the light of Christianity where all was dark before. By the sunshine of her favors and the rainfall of her financial benefits to us she has enabled us to change the barren hillsides into productive fields and add largely to the food supply of her people. [Applause.] We, in return, have consumed many of her products, and there has arisen an exchange of commodities between the two countries of mutual benefit. That this would go on under a more perfect union I can not doubt; nor

can I doubt that the interchange would be more generally beneficial than under the monarchical form of government advocated by my friend and naturalized fellow-countryman, who has so strongly expressed himself against this Government.

That the good people of the United States will refuse the admission of Hawaii, under proper regulations, and thus add another star to the galaxy which leads the van in the advance of civilization throughout the world, I can not doubt. [Cheers.] But we must show our right to march in that front rank of civilization, and therefore it behooves us to guard well the structure that has been established, and not to allow its fair fame to be sullied by acts unworthy of the cause in which it was raised. [Cheers and applause.] We believe that the present Government represents the best elements of this country. Let us so show it to the world. [Great applause.]

Mr. HATCH. Gentlemen, I believe that no opportunity should be lost to reiterate the announcement that we have no quarrel with the Hawaiian people, our quarrel is with the Hawaiian monarchy. In this connection I will introduce Chief Justice Judd.

CHIEF-JUSTICE JUDD.

Chief-Justice A. F. Judd followed with the following:

FELLOW CITIZENS: I am glad to be with you this evening. [Cries of "Hear!" "Hear!"] During the last twenty years I have attended but one political meeting before this to-night, and that was in the old Bethel, in 1881. I took a back seat at that time when a few citizens assembled together there to protest against the appointment of Celso C sar Moreno as minister of foreign affairs of this then kingdom. [Applause.] I come before you and wish to say something because I am a Hawaiian. My father came to this country in 1828. I was born here and received the larger part of my education here. I am a Hawaiian by birth, but an American in blood. [Cries of "Hear!" "Hear!" and applause.] My ancestors date back to 1634, when the first Judd came from England and settled in America. I am proud of that ancestry, and I am proud of the fact that I was born in this country. I love this country. It is my country, and it is the "garden of the gods." [Applause.]

My father devoted his life to this country and I have, thus far, conscientiously to the best interests of the Hawaiian people. [Cries of "Hear!" "Hear!"] And I challenge anyone to say that any act of mine has been knowingly done against the best interests of this country. [Applause.] And if the Queen, the classmate and friend of my early years, had listened to the advice of the justices of the supreme court she would not be where she is over there, but she would still be in the building over yonder. [The palace.] I was loyal to the monarchy and supported the autonomy of this country, and I believed, up to the 14th of January, that it was possible to maintain our independence as a Kingdom. But, gentlemen, I spent from 12 o'clock noon until 4 o'clock in the afternoon in that palace and the events which took place there converted me and made me feel that it was impossible that that state of things could continue any longer. [Applause.]

What was attempted on that day? Was it not to promulgate by force a constitution that would have destroyed the independence of the supreme court? What has been the bulwark of this country? I speak humbly; not for myself, but for my associates and predecessors. Has it not been a court that has sustained the law and the constitution and the rights of the people; an independent judiciary appointed for life, subject only to impeachment? And the constitution that was proposed on the 14th of January, was to make the term of office six years, and the salaries dependent upon such legislature as this last one. Could any white man take the commission under such conditions? Not if his name was Judd. [Applause.] This is not a political meeting. If it were a partisan, political meeting, I should have more respect for the office that I have held for nearly twenty years and stayed away. I was the last person that Col. Blount sought an interview with, and wish to say publicly that not one question did he address to me as to my views with regard to whether the revolution of January 17 was accomplished by the aid of Minister Stevens and the troops of the *Boston*. That subject he did not touch upon. [Cries of "He didn't want to touch upon it!"]

I believe, gentlemen, that it was that mass meeting held in the old armory that settled the question, was it not? [Applause.] And this mass meeting, gentlemen, settles the question that we shall be true and resolute and support the present Government, which is, as brother Hatch has called it, not only the Government *de facto*, but as it has lasted nearly a year, and received the recognition of all the great powers of the world, it is the Government *de jure*. I have sworn to support it, I intend to support it, and, gentlemen, I will only say one thing more, that we will all have to hang together or hang separately. [Laughter and applause.]

W. G. SMITH.

W. G. Smith, editor of the Star, spoke as follows:

FELLOW-CITIZENS: If I have any apology to-night for speaking in this distinguished presence, it is that I am a newcomer to these islands. But I think I may atone for that by standing elbow to elbow to you in any trouble that may come to us [cries of "Hear!" "Hear!" and applause], and in encouraging every man newly arrived on this soil to defend the institutions which you have founded, and help preserve the liberty which you have won. [Applause.] This meeting to-night, in a smaller way, must remind us of those meetings which stirred the blood of Boston and the heart of Philadelphia in the last quarter of the previous century. Then, as now, men were met together to band themselves against a despotism. [Cries of "Hear!" "Hear!" and applause.]

Then, as now, they were met to protest to the mother country that she should not betray and outrage her sons. [Applause.] Then, as now, they were met to pledge their lives, their fortunes, and their sacred honor in the cause of liberty. [Applause.] It can not be, fellow-citizens, that any man inheriting a drop of that patriotic blood, with any strain of it in his veins, could want to-day to take the place of old King George and coerce the men of his own flesh, of his own flag, and of his own speech because they are Americans enough not to bow down before a throne. [Great applause and cheers.] I do not believe, fellow-citizens, that any man who has taken that position has a right to Revolutionary sires; but I thank God that there are Americans who have spoken since the infamies of Gresham who have patriot blood and ancestry; and I thank God again that if they get the opportunity to speak in the way they would they will be heard in the earthquake voice of majorities like those of Pennsylvania and New York. [Great applause.]

Fellow-citizens, we are few, but it was said of old that one with God is a majority; and surely that cause which has Christian civilization on its side, which stands for Christianity and morality as well as liberty, will have Almighty aid. [Applause.] I say, gentlemen, we are few. Some of us are Hawaiians of American descent; some of us are Americans by birth, inheritors of Lexington and Concord [cries of "Hear!" "Hear!"]; some of us are Germans, whose sturdy manliness was never known to compromise with an enemy in arms [applause]; some of us are British by birth and inherit, perhaps, the British love of constitutional liberty, not overawed by respect to thrones; some, again, are of Latin blood, and among them centuries of subject life has not quenched the spark of democratic aspiration [applause]; but though we are of many bloods, yet we are of one mind [great applause], and that one mind means loyalty to the Provisional Government no less in its hour of peril than in its hour of apparent triumph. [Great applause.]

If we are dispossessed, I take it that it must be by the armed forces of the United States, illegally and unconstitutionally ordered for a coercive purpose and triumphing over such legal as well as patriotic opposition as our policy may see fit to put in line. Let us have hope and faith that if this outrage comes to us the time will be when the United States, in truer, wiser, and more patriotic hands, will undo the wrong and repair the infamy. [Cries of "Hear, hear!" and applause.] I want to say in closing that it is our duty, forgetting all past dissensions and minor differences, to close in solid ranks about the Provisional Government. [Great applause.] We need to do this for two reasons: One, to suppress all domestic insurrection with a hand of iron, and the other, to compel Mr. Cleveland, if he intends to follow out the course so far outlined, to do it by a violation of the Constitution, which confers the act of war upon Congress alone, and thus expose himself to merited impeachment. [Great applause.]

We can not fire upon the American flag nor upon the men in blue, our brothers and our countrymen, but we can so resist the progress of the American troops as to make their capture of this Government by President Cleveland's orders an infraction of the Constitution. [Great applause.] And that, fellow citizens, I believe we have the power to do, and not only the power to do, but the willingness to do. [Great and continued applause.] Here some one in the crowd called for three cheers for Mr. Smith, which were given with a will.

P. C. JONES.

P. C. Jones was the last speaker. He said:

Grover Cleveland has been heard from. [Laughter.] The American people are being heard from. [Laughter.] The next Congress is yet to be heard from. [Laughter and applause.] I think that Grover Cleveland in completing his plan to restore the monarchy here should have done one more thing, and that is, he should have issued an order that all four of the original members of the executive council of the Provisional Government should be shot on the day of the restoration. (Laughter.)

That in itself would have rounded out the whole scheme and would have afforded a great deal of pleasure to some royalists. [Laughter.]

Our motto you know, is "Liberty or death" [great applause] with, as the fellow said, a very strong preference for the former, [Laughter.] In thinking over the question, fellow-citizens, there is one thing that comes to me very clearly, and that is, our duty at this time to the Provisional Government [cries of "Stick to it!"] is to stand by it and support the executive. They are the men who are bearing the brunt and the burden and the strain of the day. [Applause.] We must help them with our arms, with our hands, with our tongues, with our prayers, and with every instrument that we can serve them with. We should help them. [Cries of "We will."] They are good men and true. I think the time has been taken up with speeches and I must be very brief, fellow-citizens. In 1884 when Grover Cleveland was first chosen President of the United States it was said that he obtained his election by three R's, Rum, Romanism, and Rebellion. You all know the story, and it is unnecessary for me to tell it to you.

To-day, fellow-citizens, Grover Cleveland stands impeached before the American colony of Hawaii by three R's, and I hope that very soon the U. S. Congress will also impeach him unless he retracts. [Cheers and applause.] Now those three R's are the Restoration of a Rotten Royalty. [Laughter and applause.] But, fellow-citizens, we are not alone in condemning this; there are sixty million of our countrymen in our own country backing us up. [Cheers.] And I furthermore believe, fellow-citizens, that God Almighty is with us. [Cheers.] I believe that on the 17th of January He was with us, and I believe He has been with us ever since; and in His own time and in His own way He will let us out into a large place. And so I say let us thank God, and take courage. [Cheers and applause.]

This ended the speeches for the evening. Mr. Hatch again read the resolution, and asked all those in favor of it to signify it. A mighty "aye," that almost shook the building, went up. The contrary minded were then called for, and death-like stillness was the result.

Some one called for three cheers for the Provisional Government, and they were given with a will, and, with a last tiger. The meeting broke up, and one of the most enthusiastic, as well as one of the largest assemblages Honolulu has ever witnessed was over.

[Inclosure 2.]

CITIZENS' PROTEST.

Minister Willis addressed by the people.—He is reminded that interference by his Government will be an act of war.—Full text of the protest.

HONOLULU, HAWAIIAN ISLANDS, December 1, 1893.

His Excellency ALBERT S. WILLIS,
*Envoy Extraordinary and Minister Plenipotentiary
of the United States of America:*

SIR: The undersigned, American residents of Honolulu, in the Island of Oahu, one of the Hawaiian Islands, respectfully represent to your excellency that they are citizens of the United States of America and have done nothing whereby to forfeit or waive their full legal and constitutional rights as such citizens.

That the undersigned made their residences and homes and acquired and owned property in the Hawaiian Islands, relying on the rights secured and guaranteed by the Hawaiian constitutions of 1852 and of 1865, which rights were confirmed and enlarged by the constitution of 1887.

That on the 14th day of January last the undersigned learned that it was the determination of Liliuokalani, then Hawaiian sovereign, to disregard and annul the rights of life, liberty, and property guaranteed, secured, confirmed and enlarged by the said Hawaiian constitutions, and that she publicly proclaimed her determination to repudiate the obligations imposed upon her by virtue of her oath of office as such sovereign to support and maintain the Constitution of the Hawaiian Islands, and publicly announced her intention to govern this country pursuant to her arbitrary, despotic will, to be proclaimed by a public manifesto which she called a new constitution.

That a meeting of many citizens of Honolulu was held upon the afternoon of said day, which was attended by John F. Colburn, then minister of the interior, and Arthur P. Peterson, then attorney-general, by whom it was then publicly stated that such was the determination and intention of said Liliuokalani, and that, if assisted by the citizens, they would oppose the same.

That on said 14th day of January the then legally constituted authorities of the Hawaiian Islands were undoubtedly and avowedly incapable of controlling the elements of the anarchy which was proclaimed and intended by said Liliuokalani, or of preventing impending mob violence, or of keeping the public peace.

That in consequence and by reason of the premises a committee of public safety was chosen at said meeting and on the following Monday, at a mass meeting of the citizens of Honolulu, the said committee was authorized to take measures requisite for the public safety; that, in conformity therewith, on the 17th day of said January the present Government of the Hawaiian Islands was established and proclaimed, and has since governed and controlled the Hawaiian Islands, having been recognized by all foreign representatives in Honolulu, and having diplomatic and consular representatives abroad, especially in the United States of America, who have been and still are recognized and treated as the only accredited representatives of the said Government.

That a treaty of annexation was negotiated with said Government by and in behalf of the U. S. Government, and that no public notice has been given to the undersigned of any intention on the part of the U. S. Government to break off diplomatic relations with the Provisional Government of the Hawaiian Islands, or to do any acts of war or hostility to the said Government.

That no such acts of war or hostility can now be done without endangering the lives and property of the undersigned, and of their families, relatives, and friends in the Hawaiian Islands.

That owing to the insular situation of this country there would be no opportunity for the undersigned to take such steps and do such things as would secure the safety of the lives of themselves, their wives and children, and of their property in case of such acts of war or hostility.

And the undersigned hereby solemnly and respectfully protest to your excellency, and to Grover Cleveland, President of the United States, and to Walter Q. Gresham, Secretary of State, and to Hilary A. Herbert, Secretary of the Navy, and to Rear-Admiral John Irwin, commanding the United States naval forces now in the waters of the Hawaiian Islands, and to all others concerned, that any such acts of war or hostility if taken, attempted, or announced in the time of profound peace now existing between the United States and the Hawaiian Islands, or without any full, formal, and timely announcement thereof, will and would cause all concerned in authorizing the same to be held responsible for all the consequences that may ensue therefrom, not only before Almighty God and in the form of conscience, but by all sanctioned rules and observances of civilized nations in their dealing with each other, and will and would be in violation of the rights of the undersigned, secured and belonging to them as citizens of the United States of America.

We have the honor to be, very respectfully, your obedient servants and fellow-citizens.

[Inclosure No. 3.]

Mr. Dole to Mr. Willis.

DEPARTMENT OF FOREIGN AFFAIRS,
Honolulu, Hawaiian Islands, November 29, 1893.

SIR: On the 7th of August last permission was given by the Government, through the office of the American legation, to Rear-Admiral J. S. Skerrett, commanding U. S. naval force, Pacific Station, at his request to land the crews of the ships under his command for battalion drill when desired.

The Government now wishes to rescind the said privilege in its indefinite character and to return to the former practice under which a request was made at each occasion when the privilege of landing men under arms was desired.

I have the honor to request that this modification of the present arrangement be transmitted through your office to Rear-Admiral Irwin, commanding U. S. naval force, Pacific Station.

With sentiments of the highest consideration and esteem.

I have, etc.,

SANFORD B. DOLE,
Minister of Foreign Affairs.

[Inclosure No. 4.]

*Mr. Dole to Mr. Willis.*DEPARTMENT OF FOREIGN AFFAIRS,
Honolulu, Hawaiian Islands, November 29, 1893.

SIR: Having received from our minister at Washington, Hon. Lorin A. Thurston, accredited to the Government of the United States of America, information of an official letter from Secretary of State, Hon. Walter Q. Gresham, to President Cleveland, which is of an unfriendly nature toward this Government, recommending hostile action by the President towards us, alleged copies of which letter have been published in the American press, I desire to inquire of you whether the published reports of such letter of Secretary Gresham are substantially correct? If they are, I feel that it is due this Government that it should be informed of the intentions of your Government in relation to the suggestions contained in the said letter of Mr. Gresham.

Accept the assurance of the profound consideration and high esteem with which I have, etc.,

SANFORD B. DOLE,
Minister of Foreign Affairs.

[Inclosure 5.]

*Mr. Willis to Mr. Dole.*LEGATION OF THE UNITED STATES,
Honolulu, December 2, 1893.

SIR: I have the honor to acknowledge the receipt of your note of the 29th ultimo inquiring as to the authenticity of a letter of Hon. W. Q. Gresham, Secretary of State, upon the Hawaiian question, and stating that if the "published reports of such letter are substantially correct" you "feel that it is due this (your) Government that it should be informed of the intentions of your (my) Government in relation to the suggestions contained in the said letter of Mr. Gresham."

As to the letter of Mr. Gresham, I have the honor to call your attention to the fact, as shown by you, that it is a communication from a member of the Cabinet to the President of the United States, and, being a domestic transaction, is not the subject of diplomatic representation.

Answering your note further I must express my sincere regret that it is not in my power at present to inform you of the views or intentions of the United States. The President earnestly desires a speedy settlement of your troubles, and will, in my opinion, be ready to make known his purposes as soon as he is informed of certain matters recently submitted to him.

With high regard, I am, etc.,

ALBERT S. WILLIS.

Mr. Willis to Mr. Gresham.

No. 9.]

DECEMBER 5, 1893.

In this dispatch Mr. Willis speaks solely of the difficulty experienced in translating the naval cipher which he is obliged to use and suggests that he be furnished with a simpler code.

[Confidential.]

Mr. Willis to Mr. Gresham.

No. 10.]

LEGATION OF THE UNITED STATES,
Honolulu, Hawaiian Islands, December 9, 1893. (Received—.)

SIR: On the morning of December 5 C. B. Wilson, who was the marshal of the Queen at the time of her dethronement, called upon me.

I asked him what business he was now in. He said he was doing nothing; he was "awaiting results." I asked: "What results?" He said: "The restoration of the Queen." I asked him where he got any such information. He said: "Nowhere," but he hoped for it. I then turned the conversation to other subjects.

As he was leaving he drew from his pocket a document and gave it to me, saying that he did not know whether it was proper or not and left.

Upon examining the paper I found that it was a detailed "method of procedure" upon the restoration of the Queen, a copy of which I inclose.

I endeavored to have him call on the same afternoon, but he could not be found. On the following morning Mr. Mills, whom I asked to find him, saw him at about 10 o'clock, and he said he would come immediately to see me and started toward the legation. He did not reach here for half an hour. My opinion is that he consulted several parties before coming here.

Upon reaching the legation an interview followed, a copy of which I inclose.

It will be seen that although claiming to be the author of the document, a claim which is doubtful, he finally admitted that it had been submitted to and approved by the Queen, by her attorney, and by all the members of her former ministry, all of whom had received copies.

An analysis of the list of special advisers, whether native or foreign, is not encouraging to the friends of good government or of American interests. The Americans who for over half a century held a commanding place in the councils of state, are ignored, and other nationalities, English especially, are placed in charge. This is true both of the special list of advisers and of the supplementary list. If these lists had been selected by Wilson himself, no special importance would attach to them, but it would seem from the facts that it is a list which has been approved after consultation with leading royalists and most probably with the approval of the Queen.

With high regard I am, etc.,

ALBERT S. WILLIS.

[Inclosure 1 in No. 10.]

PROPOSED COURSE OF PROCEDURE.

Immediately on receiving information officially or otherwise that Her Majesty the Queen, with Her Government as of the 17th day of January, 1893, is to be restored to its former prestige as the permanent Government of the Hawaiian Islands, Her Majesty's Cabinet as of said date will at once call a cabinet meeting for the purpose of considering on and preparing a course of action to be pursued under the circumstances, and adopting such course as will be the best means of securing protection to Her Majesty and Her Government, and the security of life and property generally to the residents of the Kingdom, and the perfect maintenance of law and order throughout the Islands, together with such other matters incident to the restoration as Her Majesty's Cabinet may deem necessary and advisable, so that the laws of the Kingdom may and can be constitutionally enforced, and all unnecessary bloodshed and loss of life through possible fanatical opposition be avoided.

Those possible events should be provided for by the discussion of matters of such a complicated nature and of such far-reaching consequences, in a calm and sober way, prior to the event. None but the best results may be looked for, and if carefully and calmly reasoned out the highest success should be the result; while if left to the last moment for discussion and action, hasty conclusions may bring disappointment, failure, and possibly even serious disaster.

After Her Majesty's cabinet have decided upon a plan and course of procedure they shall invite to their counsels, in a body, the following list of tried and trusty

friends of the monarchy and nation, to act with as advisers and assistants on all matters taking place during the restoration of Her Majesty and her Government to the standing from which they were so unjustly forced until the natural order and tranquillity of former times shall be once more established, and Her Majesty's Government be once more recognized as the lawful and regular Government of the Hawaiian people.

These persons named as advisers and assistants will meet with the cabinet for the purpose of considering, suggesting, and amending, if necessary, and finally approving and adopting the plans laid before them by the cabinet for the attainment of the previously-mentioned objects. After final action by the united meeting the cabinet will at once proceed to lay the result before Her Majesty for her approval, the advisers and assistants meanwhile remaining assembled, to await the return of Her Majesty's cabinet after their meeting with Her Majesty. On their return they shall report the result of their conference with Her Majesty to the meeting, and the joint meeting will then consider and approve it. Upon which, having by vote placed the execution of the approved plans in the hands of the executive, the meeting will adjourn subject to call by the cabinet, they in the meantime to place themselves individually in its hands for orders or for counsel as the executive may require or direct.

The preceding propositions are made in the event of the United States Government, through its officials, causing and compelling the Provisional Government to surrender unconditionally and proceeding to the restoration of Her Majesty's Government as it was on the 17th day of January, 1893, possibly coupled with a request or a recommendation to mercy and leniency on behalf of those who took part as principals in the overthrow of the Queen's Government on that date.

In the event of such restoration taking place in order that the details may be properly attended to, and that an assurance may be given that law and order will be maintained, and that the Constitutional Government of Her Majesty Queen Liliuokalani be once more established on an assured basis, the following important details must be carried out while at the same time having due regard to all recommendations of leniency made by the United States Government.

(If it does not conflict with their instructions from their home Government, the U. S. commander in chief should be requested by Her Majesty's Government to bring and keep his forces on shore, in quarters to be provided for them, till Her Majesty's Government has been fully reorganized and feels itself in a proper condition to maintain law and order; and also, if not in conflict with his instructions from home, that he be asked by Her Majesty's Government to direct that the place and hour of surrender by the Provisional Government and its forces to him and his forces be at 10 o'clock a. m. on _____, the _____ day of _____, 1893, at Palace Square, where they will deliver up to him the possession of the Government and its buildings and archives, and hand over to him all the arms and munitions of war delivered up to them on the 17th day of January, 1893, by Her Majesty's Government, and all other since obtained by them or which have been in their possession since, and surrender all their officers and men to him as prisoners to be subsequently turned over to Her Majesty's Government, to be dealt with by a court specially appointed for that purpose; also the turning over of Government arms and munitions of war, prisoners, etc., by the United States Government to Her Majesty's Government.)

Detail for Consideration and Adoption.

I. Proclamation by the Queen's Government of their reassumption of the control of the Government of the Hawaiian Islands.

II. Appointment of Commander-in-Chief and staff.

III. Proclamation of Martial Law and the suspension of the Writ of Habeas Corpus.

IV. Calling on all loyal citizens and well-wishers of the Government to register their names for service at _____ office; Enrollment of Volunteers.

V. Surrender of all arms and ammunition in private hands, and the prohibition of all sale and transfer of arms and ammunition other than by direction of the Commander-in-Chief.

VI. Taking possession of all Government Buildings and other places necessary by the Queen's forces and placing guards therein.

VII. Proclamation prohibiting the departure of coasting vessels or other vessels to the other Islands.

VIII. Reappointment of all officials and the filling of vacancies.

IX. Arrest of all persons implicated or concerned in the late overthrow.

X. Custody and care of all prisoners made under authority of the above paragraph and those handed over by the U. S. forces.

XI. Receiving of all arms and munitions of war and other Government property surrendered to U. S. forces by the P. G. forces.

XII. Despatch vessels to the other Islands to proclaim the Queen's Government and make all necessary changes and arrests.

We hereby certify that the above thirteen (13) pages have this day been compared with the original type-written four (4) pages and are an exact copy both in words and punctuation.

Witness our hands this 5 Dec., 1893 at 2.30 p. m.

ALBERT S. WILLIS,
E. E. & M. P., U. S. A.
ELLIS MILLS,
Consul General of the U. S.

[Inclosure 2 in No. 10.]

Q. In the paper you left with me yesterday mention is made of certain parties to be invited to your council. You did not give any list.—A. I have the list in my pocket.

Q. Did you intend to leave it with me the other day?—A. No.

Q. Have you any objection to my reading it?—A. No.

(Reading:) Prince David, Prince Cupid, S. Parker, C. P. Jankia, J. H. Boyd.

Q. Who is J. H. Boyd?—A. Clerk in the Interior Department.

(Reading:) J. Richardson, A. Fernandez—that is Mr. Richardson, of Maui?

A. Yes; Richardson and Fernandez are selected. They would be called upon to be present [having a check \checkmark mark].

Q. Then among those that would be called upon to be present at any meeting would be Richardson and Fernandez?—A. Yes. (Reading:) J. F. Colburn, C. White, Hon. Alex. Robertson.

Q. What does the round mark \oplus mean near the name?—A. That they have been Government officers.

(Reading:) W. R. Holt, P. D. Kellett—he has a round mark.

A. He is a clerk.

(Reading:) W. Aylett, Kaunama, Kanuokano, C. Maile.

A. He is not an officer—the mark ought to be rubbed out.

(Reading:) P. Woods.

A. He is a Government officer.

(Reading:) C. Nolein (no mark), J. Cummins, J. E. Bush (mark \checkmark), W. R. Wilcox, Joseph Nawahi, C. L. Hopkins (he is marked \checkmark), Bergemann, G. E. Boardman.

A. He was deputy collector of customs.

(Reading:) J. Testa, H. B. Defrees, S. Dwight, J. D. Holt—he has a round mark.

A. He is a Government officer.

(Reading:) H. Poor, J. L. Kaulakou—he has a round mark—Kahaomi, there is no mark, Alapi, H. Smith, Carl Widdeman. The only names that have check (\checkmark) marks opposite them are John Richardson, A. Fernandez, Kellet, Sam'l K. Pira, Kaluomano, C. L. Hopkins, J. E. Bush, J. L. Kaulokou.

A. Those are all I have selected.

Q. I see you have a second list.—A. Yes; that is the foreign list.

(Reading:) J. O. Carter (check), F. A. Schaefer (check), John H. Phillips (check), J. E. Quinn (check), Dr. Geo. Trousseau (check), J. Campbell (check), C. J. McCarty (check), T. R. Lucas (check), R. More (check).

A. Those with checks are my selection.

(Reading:) P. Neumann, McIntyre, W. H. Rommell, C. W. Ashford, R. F. Bickerton. Is that the judge?

A. Yes.

(Reading:) J. W. Robertson, Daniel Logan, Lloyd A. P. Peterson, E. Narvie, Rickard, Fred. Harrison, W. F. Love, Maj. Seward, W. Cunningham, E. S. Cunha, H. A. Widemann, A. P. Cleghorn, W. G. Irwin, J. B. Peterson, T. R. Walker (British vice consul), Marquise, W. A. Whiting, Crowley, L. G. Levey, C. O. Berger, J. Kenyon, Capt. Jno. Ross, Geo. F. Ross, sr., E. B. Thomas, T. B. Walker, J. F. Bowler, F. Wundenburg. These are foreign names that you had picked?

A. Yes.

Q. Did you pick them yourself?—A. I picked them out to propose to the cabinet.

Q. Who prepared this paper?—A. Kenyon, who was my former secretary and clerk, did the typewriting from the copy I furnished him.

Q. Do I understand that you drew up this without consultation with any other person?—A. Yes, sir.

Q. Did you have any intimation from any person in the world that the Queen would be restored?—A. I had not.

Q. This is your own work entirely?—A. It is.

Q. You are a pretty good lawyer if you drew this up. This is your verbiage?—A. Yes, sir.

- Q. Have you ever studied law?—A. No.
- Q. Did anybody see this?—A. Mr. Peterson.
- Q. Did he aid you?—A. No.
- Q. Who else saw it?—A. Peterson, Paul Neumann, and the Queen saw it.
- Q. When did the Queen see this?—A. The day before your arrival. She saw the original four months ago.
- Q. This has been a long-pending matter, then?—A. Yes.
- Q. Did you have any authority from the Queen to do it?—A. No.
- Q. Did she approve of all this?—A. Yes.
- Q. Who was present?—A. My wife.
- Q. Yourself and your wife were present when you submitted this to the Queen—the original paper, of which this is a copy—and she approved it?—A. Yes.
- Q. What do you mean by saying “to be dealt with by a court especially appointed for that purpose?” Was it a court within or without the law?—A. A court under martial law.
- Q. I see one of your details calls for the “suspension of habeas corpus and trial by martial law?”—A. Yes.
- Q. What is meant in clause 7 by “prohibiting the departure of sailing vessels?”—A. To prevent carrying news to excite the people on the other islands.
- Q. Did you discuss with the Queen as to the time—how long—martial law ought to last?—A. No.
- Q. What do you mean by the “reappointment of officials and filling of vacancies,” in clause 8?—A. The reappointment of those who had been dismissed by the Provisional Government.
- Q. What do you mean by “filling the vacancies?” Take the case of Mr. Dole, would you consider all those offices vacated?—A. Yes.
- Q. Section 9. How about the arrest of “all persons concerned in the late movement?”—A. We propose to arrest all leaders in the revolution.
- Mr. WILLIS. I took this paper. I do not intend that you should draw any inference whatever from that. I am surprised to hear you say you are the sole author of this paper. My idea was that you had been in consultation with others. It seems strange that you should have written this without any knowledge of what the United States meant to do. That you may not misunderstand me I now return the paper. I did not know at the time what its contents were. I wished to inquire from you in regard to the authorship, etc. I would not have taken it had I known its contents.
- Q. You say you gave a copy to Mr. Paul Neumann. Is he now the Queen’s attorney?—A. He is now and always has been. I gave, also, a copy to Mr. Peterson and other members of the cabinet.

Mr. Willis to Mr. Gresham.

No. 11.]

LEGATION OF THE UNITED STATES,
Honolulu, Hawaiian Islands, December 14, 1893.

SIR: The day set apart by the President’s proclamation as a day of thanksgiving was appropriately observed by the American citizens residing in Honolulu. The customary newspaper notices from the U. S. legation were inserted and services were held in the Central Union and St. Andrew’s churches.

Very respectfully,

ALBERT S. WILLIS.

Mr. Willis to Mr. Gresham.

No. 12.]

LEGATION OF THE UNITED STATES,
Honolulu, Hawaiian Islands, December 14, 1893.

SIR: Your cipher telegram of the 2d instant was delivered to me by Capt. Munger of the revenue cutter *Corwin* this Thursday morning, December 14, at about 6:30 o’clock. I gave it to Admiral Irwin within a half-hour. He and his secretary have been engaged in deciphering

it up to this time, 3 p. m. The steamship *Mariposa* was to leave at 12 m., but the agents voluntarily offered to detain her until 5 p. m., which offer I accepted in the hope that after reading your telegram I might answer it.

In view of the length of time required to translate the naval cipher, I desire to most respectfully renew the suggestion made in my dispatch, No. 9, of December 5, that the State Department cipher or the one which I heretofore inclosed to you be hereafter used.

The excitement consequent upon the unexpected arrival of the *Corwin* is intense throughout the city. The President's message, which was published this morning, has increased the excitement, but I hope no immediate outbreak will occur.

With high regard, very respectfully,

ALBERT S. WILLIS.

Mr. Willis to Mr. Gresham.

No. 13.]

LEGATION OF THE UNITED STATES,
Honolulu, Hawaiian Islands, December 14, 1893.

SIR: I have the honor to acknowledge the receipt of Department dispatch, No. 5, inclosing two copies of the report of the electrical congress held in Chicago August 19, 1893, in the matter of units of electrical measure.

Very respectfully,

ALBERT S. WILLIS.

Mr. Willis to Mr. Gresham.

[Confidential.]

No. 14.]

LEGATION OF THE UNITED STATES,
Honolulu, Hawaiian Islands, December 18, 1893.

SIR: Your cipher instructions of December 2 were received as translated at 3 p. m. Thursday, the 14th instant. An arrangement was immediately made for an interview with the Queen for Saturday, December 16 at 9 a. m.

Mr. J. O. Carter was invited to be present. Mr. Carter, as stated in my dispatch No. 3, of November 14, is a brother of the late Mr. H. A. P. Carter, who was the Hawaiian minister to the United States. He is the president and manager of the incorporated company of "C. Brewer & Co.," which does a large general mercantile and commission business, and is agent for a number of large sugar plantations. He is conceded by all factions to be a man of great intelligence and strict integrity. He is a native Hawaiian, but of American parentage.

At the appointed hour the Queen and Mr. Carter came, and the interview was, with their consent, reported stenographically by Mr. Mills, our consul-general.

I inclose the report, verified by the Queen and Mr. Carter. I also send a copy of a part of the interview with the Queen, reported in my dispatch No. 3, of November 14, which is also verified by the Queen, marked A.

Mr. Mills' report includes all that was said. It will be observed that no restrictions were placed upon the Queen or upon Mr. Carter, the object being to secure a full and unreserved expression of views. This interview was held at the legation.

Very respectfully,

ALBERT S. WILLIS.

The Queen was informed that the President of the United States had important communications to make to her and she was asked whether she was willing to receive them alone and in confidence, she being assured that this was for her own interest and safety. She answered in the affirmative.

I then made known to her 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. To this she bowed her acknowledgments.

I then said to her: "The President expects and believes that when reinstated you will show forgiveness and magnanimity, that you will wish to be Queen of all the people, both native and foreign born, that you will make haste to secure their love and loyalty, and to establish peace, friendship, and good government." To this she made no reply. After waiting a moment I continued:

DECEMBER 16, 1893.

Mr. WILLIS (addressing the Queen). I sent word yesterday asking you to come this morning and to bring Mr. Carter, whom you had mentioned in a previous interview as one of your friends. His was the first name given to me in the only interview we have had. My idea was to have some one present as your friend, who could hear what I wish to say to-day.

(Addressing Mr. Carter, Mr. Willis said:)

Mr. Carter, before having any further conversation it is proper I should make known to you what occurred at the previous interview. On the 13th of November I sent word to the Queen asking if she would come here, as there would be less publicity than if I went to her house. She complied, came here with Mr. Robertson, and a conversation ensued the substance of which I have made known to the President. I will read what I have written as an official report to the President, as leading up to the present interview, and as I read [speaking to the Queen] if there is any portion of the interview as given that you think is incorrect do not hesitate to stop me and make such changes as you desire, although it has been already submitted.

[The report in question was at this point read to the Queen by Mr. Willis. It is appended hereto, marked A.]

Mr. WILLIS. I wish to ask you now, and I ask you to deliberate well before answering, whether the views expressed at that time, as read to you now, have been in any respect modified since that conversation?

The QUEEN. They have not.

Mr. WILLIS. You still adhere to your judgment, as then expressed, that all of those persons should be punished according to the law under the constitution of 1887, which is that they should be punished with capital punishment and their property confiscated?

The QUEEN. I feel that if any change should be made that they must not be permitted to remain in the country, and that their property should be confiscated. That is my view.

Mr. CARTER. You do rescind so much of that interview as pronounced upon them the death penalty?

The QUEEN. I do in that respect.

Mr. CARTER. You feel that their remaining in the country would be a constant source of trouble to you and your people?

The QUEEN. I do. I think I mentioned at the time that should they be permitted to remain, that as they have once committed treason and this being the second offense, that the next time would be dangerous for the community and the people. I think I said that in the other conversation.

Mr. CARTER. In general terms, then, you feel that the continued living in this community of these persons who were guilty of the act of 1887, and the act of the 17th of January, would be dangerous and a constant menace to your people?

The QUEEN. I do. I feel also that if they were sent away they should never be permitted to return—they or their children.

Mr. CARTER. Unless you exercised clemency; or would you pronounce against them definitely now?

The QUEEN. I feel so; that they should be permanently banished, and their children.

Mr. WILLIS. The present Provisional Government while in existence has created certain obligations. Would you consent that all such obligations assumed in the proper course of administration should be assumed and paid by you?

Mr. CARTER. May I make it clearer? The minister wishes to know if the obligations the Provisional Government has entered into under the law, you would be willing that your Government should assume and be responsible for those obligations.

The QUEEN. Yes.

Mr. CARTER. I want to make matters clear. I think they have been careful as a rule to observe statutory provisions, but there have been exigencies that demanded actions that are entirely outside statutory provisions—appropriations made, moneys expended. The question is, how far the new Government should be responsible for such acts.

Mr. WILLIS. That is the question to which I desire an answer. Whether, in the exercise of their discretion, they have even adopted measures that may not be strictly conformable to the statutory law of the land, but if the money has been expended for the benefit of the people in the matter of roads or in any other way, and not put into their private pockets. If these expenditures have been of a public character, and there is no charge of corruption, would they be recognized, whether strictly in conformity with the statutory law or not?

The QUEEN. I think such expenditures are legal. I would recognize them.

Mr. CARTER. There has been a very heavy expenditure for military.

Mr. WILLIS. That is a question I wish explicitly answered. Grant that there has been; would you or would you not consider that an expenditure in the proper course of administration?

The QUEEN. I have thought the matter over; but I felt that the confiscation of the properties belonging to these parties would cover.

Mr. CARTER. You believe that persons should be held in their estates liable for such matters—military, police, and other expenditures of like nature?

The QUEEN. I do.

Mr. CARTER. I want to say a word. I have never said one word to Her Majesty on the subject. These questions are entirely new to me.

Mr. WILLIS. It is entirely proper for you to ask such questions as you have. Any question that brings out the exact views of Her Majesty is entirely proper. I understand [speaking to the Queen] then, in answer to the last question, that you would be willing to give an unqualified agreement that all obligations created by the Provisional Government in the ordinary course of administration should be assumed, but that as to the expenditure for police and military defense you would leave the cost of that to be met out of property confiscated from those who were engaged in the revolution? Is that right?

The QUEEN. Yes.

Mr. WILLIS. I understand from you that you would be unwilling to give a pledge that would absolutely prevent the adoption of any measure of proscription or punishment for what has been done in the past, as to those setting up and supporting the Provisional Government. I understand you to be unwilling to give such a pledge?

The QUEEN. I do not understand.

Mr. WILLIS. I understand from the fact that you have affirmed our previous conversation, and from your conversation to-day, that you would not be willing to grant absolute amnesty both as to persons and property to those who have either supported or who have aided in setting up the Provisional Government. That you feel you could not do it?

The QUEEN. I feel I could not do it for the safety of our subjects.

Mr. CARTER. That is, that the continued presence of these people is a continued menace?

Mr. WILLIS. Do you adopt Mr. Carter's words?

The QUEEN. I do.

Mr. CARTER. I would like to make one remark here. Do I understand your Majesty that this matter is one that you may personally decide—that it is not one that you can commit to the ministers that you may appoint?

Mr. WILLIS. I am not instructed to ask such views. It is the views of the Queen herself I wish to ascertain. I have asked you to come here so that there can be no mistake in the matter. I am authorized, directly instructed and absolutely required to know three things—two of which I have asked, and I am now about to ask the third. It is this: Whether in the event of a restoration it would be a restoration under the existing constitution of the country or under a different constitution?

The QUEEN. I believe it would be better to have a government under a new constitution that would be more suited to the present times and to the future. May I add—

Mr. WILLIS. Anything at all. There is no restriction upon what you may say.

The QUEEN. That it would be one that would give the same privileges to my subjects as to the foreign subjects in my country. That they should receive the same advantages as the foreigners of which they have been deprived since 1887.

Mr. WILLIS. If I understand you the objection you have to the constitution of 1887 is the property qualification in voting for nobles, by which the native population is largely excluded from suffrage.

The QUEEN. That is correct.

Mr. WILLIS. Is there any other objection to that constitution?

The QUEEN. That is the principal objection. In the constitution I intended to promulgate, I changed the time of the term of the chief justice to six years, because I felt that if it were a life appointment that there are no bounds by which whoever holds the office—there would be no bounds by which he would carry on. There would be no limit to his actions.

Mr. WILLIS. In your remark as to the supreme court, do you limit it to the chief justice or does it include all the supreme court?

The QUEEN. All of them.

Mr. WILLIS. You mean not only the chief justice, but your judgment is that all of the supreme court should be appointed for six years?

The QUEEN. Yes; but if they proved themselves correct in their department they may be appointed over again for another six years.

Mr. WILLIS. How are their salaries to be determined?

The QUEEN. It would not affect the salary.

Mr. WILLIS. The salary would remain as at present?

The QUEEN. Yes.

Mr. WILLIS. The reason I ask you was that there has been some rumor that the question of salary was to be left to the legislature.

The QUEEN. I think the legislature would appropriate the sum.

Mr. CARTER. The minister wishes to know whether the salary they entered the office with would be the salary they would continue to receive?

The QUEEN. Yes.

Mr. CARTER. The idea is that they are not to be reduced to submit to the will of the legislature.

Mr. WILLIS. Is it your idea that the salaries they receive at the time of their appointment shall not be subject to change by the legislature or other action during the term of six years?

The QUEEN. Yes. These questions may be submitted to the cabinet.

Mr. CARTER. That is another question. The minister wishes to get at your thought.

Mr. WILLIS. You are the only one now authorized to speak for your Government. In the conversation you have had to-day in the presence of Mr. Carter, you fully comprehend the meaning of all that has been said, and all that you have said, and you adhere to it?

The QUEEN. I do.

Mr. WILLIS. You adhere to it?

The QUEEN. I do.

Mr. WILLIS. When this is written out and you have made such changes as you deem proper, I will ask you to sign it. When signed, it will be submitted to the President. Is there anything further you desire to say at the present time?

The QUEEN. I wish to mention, speaking of the new constitution, that it would require some changes. The new constitution I wish to make up would require more members.

Mr. WILLIS. Of the legislature?

The QUEEN. No; in the cabinet.

Mr. WILLIS. Had you determined in your mind how many should be in the cabinet?

The QUEEN. Six instead of four.

Mr. WILLIS. Have you anything more you wish to say?

The QUEEN. Nothing more.

The within report of an interview held between the Queen and Mr. Willis, the United States minister, on the 16th instant (Mr. J. O. Carter being present at the said interview), has been read in our presence by Consul-General Mills, and agreed to by both of us as being full and correct in every particular.

LILIUOKALANI.
J. O. CARTER.

HONOLULU, HAWAIIAN ISLANDS,
December 18, 1893.

Witness:
ELLIS MILLS.

(Indorsement:) Interview with ex-Queen, Saturday, December 16, 1893. This interview took place at the legation.

Mr. Willis to Mr. Gresham.

[Confidential.]

No. 15.]

LEGATION OF THE UNITED STATES,
Honolulu, Hawaiian Islands, December 19, 1893.

SIR: In the forenoon of yesterday (Monday, December 18) Mr. Mills met the Queen and Mr. Carter at the Queen's private residence, "Washington Place," when the report of the interview held at the legation on the preceding Saturday was read over and verified.

After the close of Saturday's interview and the withdrawal of the parties, Mr. Carter returned to inquire whether a supplementary statement by the Queen would be received. He informed me that he had held a conversation with her a few minutes after she left the legation, and he believed that on next Monday (this being Saturday) she would desire another interview. I told him that the object of the President was to ascertain her course of action in the event of restoration; that the United States could not dictate the policy of the Queen, if restored, nor interfere in any way with the domestic affairs of her Kingdom. A certain status or condition of affairs existed on the 17th of January, 1893, which was overthrown by our unlawful intervention. If the President, within constitutional limitations, could remedy this wrong, he was willing to do so, and to this extent only and under these circumstances only he inquired as to the future policy of the Queen. Whatever she determined upon, however, must be her voluntary act.

With this explanation I consented to receive further communications from the Queen.

Accordingly, upon learning that the Saturday interview had been verified, I went to Washington Place, where the interview occurred, a report of which I inclose.

Very respectfully,

ALBERT S. WILLIS.

[Inclosure with No. 15.]

DECEMBER 18, 1893.

Mr. CARTER. I am permitted by Her Majesty to say that I have had a conversation with her this morning concerning the first interview you had with her; that I have said to her that I was surprised and pained at the substance of it; that I have felt that the remarks you have made as coming from the President of the United States are entitled to Her Majesty's consideration, and that they are to carry weight as being the expressions of the President, particularly in reference to this first statement, where the President expresses his 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 coöperation, the wrong done to her and her people might be redressed."

I have explained as clearly as possible the meaning of the words "consent and coöperation;" that he recognizes he alone can not do all that has to be done.

I then referred to this expression as given by you, that the President believes "that when reinstated you will show forgiveness and magnanimity, that you will wish to be Queen of all the people, both native and foreign born, that you will make haste to secure their love and loyalty and to establish peace, friendship and good government."

I have said to her that I have been deeply impressed with that language and I think that perhaps Her Majesty is now more impressed with this language than she was at first, and I say to her that it seems to me good government is impossible without Her Majesty shows a spirit of forgiveness and magnanimity; that this movement against her and her people embraced a large and respectable portion of the foreign element of this community—an element we can not ignore.

I next came to this expression: "Should you be restored to the throne, would you grant full amnesty as to life and property to all those persons who have been or are now in the Provisional Government, or who have been instrumental in the overthrow of your Government?"

I have said to Her Majesty that it seems to me that the position of Mr. Cleveland is full of difficulties and embarrassments; that as President of the United States he is a ruler among the nations of the earth as Her Majesty was and, I hope, is to be, and that she should make the way as clear to him to carry out his wishes to repair the wrong done as she possibly can, not giving way to any personal feelings in the matter; that she must leave out of consideration in the question any idea of revenge. I told her that I took it as the wish of the President that she should grant amnesty as to life and property.

Then I went on to the remark that she makes that she feels unsettled and unsafe with these people in the country. I am bound to repeat what Her Majesty said to me, although it may not be in accord with my own views, that she feels that these people should leave the country, or peace and good government can not prevail. She thinks any third attempt at revolution on the part of these people would be very destructive to life and property; that her people have stood about all they can stand of this interference with what they consider their rights.

I have gone into the matter of the constitution with her, because I know our views are not as fully in accord as I wish they were. I have said to Her Majesty that I think she can safely put her cause into the hands of the President of the United States, and say to him unreservedly, "You dictate my policy and I will follow it."

Is Your Majesty satisfied with the statement I have made? Is it correct?

The QUEEN. Yes.

Mr. CARTER. Is it your wish?

The QUEEN. I must think a moment.

Mr. CARTER. But you said you are not seeking the lives of these people.

The QUEEN. Not their lives. I am willing their lives should be spared.

Mr. CARTER. And their property?

The QUEEN. Their property should be confiscated to the Government, and they should not be permitted to remain in the Kingdom.

Mr. CARTER. Is Your Majesty willing that this should be taken by the minister as your wish to-day, that this matter should be put unreservedly in the hands of President Cleveland with this statement. This is said by me as a friend, and I think you have always found me such. In the conversation had with you this morning I asked you as a friend to you and your people that you give it prayerful consideration. You need not sign it if you do not wish. It is your privilege to do as you please. I wish you would read it over, consider it, and give it to Mr. Willis at as early a moment as possible.

The QUEEN. I should like to talk with some of my friends.

Mr. CARTER (to Mr. Willis). Can she see some one in the matter?

Mr. WILLIS. I do not think it would be safe. I take it for granted that in matters of such great importance she has ascertained the wishes of her native people and the leaders, and that she has been in consultation with them upon these general propositions. Is not that true, Your Majesty? I mean as to the general policy to be pursued?

The QUEEN. I have. I must mention here (speaking to Mr. Carter) that I have never consulted you in this matter before. But I have talked the situation over with some of my subjects, and I consider their judgment is wise and in accordance with law, and have come to the conclusion that the statement I gave in my first interview was what the people wished. I had hoped some day I might have a chance to confer with you, Mr. Carter, in these matters.

Mr. WILLIS. I understand, then, that you said that the first interview I had with you embodies the views of the leaders of your people with whom you have been in consultation in the present crisis?

The QUEEN. They do.

Mr. WILLIS. And you have no withdrawal to that to make this morning?

The QUEEN. Although I have never stated to them what I had decided personally, still I feel that there may be some clemency, and that clemency should be that they should not remain in the country.

Mr. WILLIS. That is the extent of the clemency—that they should be removed from the country instead of being punished, according to the laws of the country, with death.

The QUEEN. Yes.

Mr. WILLIS. I understand that there is no withdrawal of your conversation of Saturday with reference to military expenses and police expenses that have been incurred by the Provisional Government. You still insist that those expenses should be met out of property confiscated?

The QUEEN. I feel so.

Mr. WILLIS. I understand that you would not be willing that the constitution as it existed on the 17th of January, 1893, should be established permanently in the Islands, believing, as you stated on Saturday, that it discriminated against your native subjects.

The QUEEN. The constitution I wished to promulgate was an improvement on the constitution of 1887, but since then I have considered further, and think that we ought to have a constitution that would be more suited to the future. I would not like to have the government continue under that constitution.

Mr. WILLIS. In the limitation which you now make as to your clemency, do you include their children or just the parents? Last Saturday you said: "They and their children." Do you still adhere to that judgment?

The QUEEN. I do.

Mr. WILLIS. Both parents and children should be permanently removed from the country and their property confiscated?

The QUEEN. I do, and their property confiscated.

Mr. WILLIS. I desire now to read to you in the express terms the judgment of the President. After citing the fact that Mr. Blount had been sent here to ascertain the facts in connection with this revolution, and after expressing a conclusion based upon Mr. Blount's report, that this revolution resulted largely if not entirely from the improper intervention of our then minister, and of the American troops, and expressing his desire within certain limitations to correct the wrong done, he states as follows:

"On your arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of this determination. * * * 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."

I read now from a cipher dispatch which has been sent since my communication of the 14th of November, in which it is stated:

"Should the Queen refuse assent to the written conditions, you will inform her at once [which I now do] that the President will cease interference in her behalf, and while he deems it his duty to endeavor to restore to the sovereign the constitutional government of the islands, his further efforts in that direction depend upon the Queen's unqualified agreement that all obligations created by the Provisional Government in the proper course of administration shall be assumed, and upon such pledge by her as shall prevent 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.

"The President feels that we by our original interference have incurred responsibilities to the whole Hawaiian community, and it would not be just to put one party at the mercy of the other."

The QUEEN. I want to say in regard to the request of Mr. Cleveland asking for complete amnesty—how shall I know that in future our country will not be troubled again, as it has been in the past?

Mr. WILLIS. That is a question of domestic policy of the country which you have to decide largely for yourself. Do you intend to inquire as to whether the United States would support you if restored?

The QUEEN. I do not expect that. The decision I have given is not from any feeling of disrespect to the President nor from a feeling of animosity toward anyone here, but I feel it is a duty I should assume for the benefit of my people.

Mr. WILLIS. I so understand it—that you are of the opinion that under the state of things which existed at the time of this revolution, and also in 1887, that there could not be permanent peace in the islands. That is a matter that the United States has no right to look into or express an opinion upon.

The foregoing has been read to us by Consul-General Mills, and we pronounce it a full and correct report.

Honolulu, H. I., December 18, 1893.

LILIUOKALANI.
J. O. CARTER.

Witness:
ELLIS MILLS.

(On back:) Interview with ex-Queen in presence of Mr. J. O. Carter. Monday, December 18, 1893. This interview occurred at Washington Place, the ex-Queen's private residence.

After this paper was signed, as above, Mr. Mills said to the Queen, in behalf of Mr. Willis, that the reports of the two interviews of Saturday, December 16, and of to-day (Monday, December 18), as attested by her, would be immediately forwarded to the President, and his answer, when received, should be promptly made known to her.

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

addressing the President, who was for the time being the formal representative of these people, I felt no hesitancy in employing the usual terms of friendship, drawing, however, in what I said, a distinction between the Provisional Government as a government and the people of the islands. These statements were not only, as I have said, consistent with the uniform policy and feelings of the United States for half a century, but expressed, as I knew, the personal feelings of the President and of yourself towards the officers of the Provisional Government as men, and the kindly regard and interest felt in the welfare and happiness of all the people who are now under its *de facto* rule.

From that day until last Tuesday at half-past one, there has been no expression, direct or indirect, from the representative of the United States towards the Provisional Government, explaining or defining our relations, present or prospective, towards it. The delay in making any announcement of your policy was, as you well understand, because of the direct verbal and written instructions under which I have been acting. Under those instructions my first duty was to guard the life and safety of those who had by the act of our own minister been placed in a position where there was an apparent antagonism between them and our Government. As I understood from the President and from you, the sole connection which our Government had with the settlement of the Hawaiian question was the undoing of what, from an international standpoint, was considered by the President to have been a wrong to a feeble, defenseless, and friendly power. In undoing this wrong I was, however, instructed first of all to see that proper safeguards were thrown around those who had been probably misled as to the position of our Government and the wishes of our people.

My dispatch No. 3, of November 14, set forth my inability to secure satisfactory guarantees from the Queen upon the points indicated. Until that was done you had directed me to take no further steps, but to inform you of the result, which I did by a cipher telegram as well as by the dispatch referred to. Your cipher instruction in reply thereto, dated December 2 and received by me December 14, by the revenue cutter *Corwin*, reiterated the duty which had been already enjoined upon me to secure these guarantees.

I accordingly renewed my efforts in that direction, and finally, on last Tuesday morning at 9 o'clock, as hereinbefore stated, I secured from the Queen the written pledge and agreement which was the prerequisite of my further action.

Having received this pledge, I was then for the first time in a position to make known to the Provisional Government the decision of the President upon the questions that had been submitted to him by the protest of the Queen, which protest had been acknowledged and accepted by the Provisional Government through its President, Mr. Dole, the immediate effect of which was, according to the statement of Mr. Damon, another honored member of the Provisional Government, the Queen's temporary surrender of her throne.

You will observe that in presenting the decision of the President I have used the language employed by yourself in your instructions to me upon the subject. In my opening statement I thought proper to explain what was known to you, and doubtless to the Provisional Government, that the secrecy which had been observed by our Government was in the interest of the peace and safety of this community.

The President's attention had been called by you to the evidence contained in Mr. Blount's report showing the extraordinary complications and dangers surrounding this community, among which were the racial

prejudices, the intense feeling consequent upon the dethronement of the constitutional sovereign, the presence of so many different nationalities—Chinese, Japanese, Portuguese, Americans, and English—in such large numbers and with such diverse traits and interests, the possibility that the Japanese, now numbering more than one-fifth of the male population of the islands, might take advantage of the condition of affairs to demand suffrage and through it to obtain control of the Government, together with the discontent of the native Hawaiians at the loss of their Government and of the rights secured under it.

In addition to these facts, I was fully apprised by you in your personal conversations of the presence here of many lawless and disorderly characters, owing allegiance to neither party, who would gladly take advantage of the excitement and general derangement of affairs to indulge in rapine and mob violence; and also of the conflict between the active responsible representatives of the Provisional Government and certain men who were not officially connected with it, but who had undertaken to dictate its policy. The danger from this last source I found upon arriving here was much greater than you had supposed. As I stated to you in my dispatch, No. 2, of November 10, the President and ministers of the Provisional Government and a large per cent of those who support them are men of high character and of large material interests in the islands. These men have been inclined to a conservative course toward the Hawaiians.

They had placed in the police and fire departments, and also in many other more important offices, native Hawaiians, thus endeavoring to conciliate the friendship and support of the 40,000 natives of the country. The irresponsible element referred to were pressing for a change of this wise and patriotic policy and insisting that they should be invested with all power, thus intensifying and aggravating the racial feeling already too extreme. Many of these men were open in their threats against the life of the Queen. They have even gone as far in the public prints and elsewhere as to threaten the representatives of the Provisional Government in the event they should listen to the President's supposed policy of peaceful settlement, if it involved the restoration of the Queen.

Besides this danger, which would have been precipitated by any premature announcement of the policy of our Government, there was another danger deserving serious attention.

The native Hawaiians, under the wise advice of their best native leaders supplemented by that of many sympathizing foreigners, have maintained the policy of peace during the settlement of this question. While, however, they have been always known as a peaceful and law-abiding people, the evidence of the most thoughtful men in these islands, including Mr. Damon, the present minister of finance, called attention to the fact that under proper leadership they might collect quite an effective and aggressive following; hence his opinion given to Mr. Blount while here and to me since that a strong force should be retained by the Provisional Government or else trouble might result from a sudden attack on their part.

The history of the Hawaiian people, their well-known devotion to the cause of royalty or chieftainship, their willingness to sacrifice themselves in defense of their supposed rights or in redress of the wrongs imposed upon those whom they revered confirmed the opinion expressed by Mr. Damon as to their manly spirit and courage.

Repeatedly since I reached these islands I have been advised by those in the confidence of the native Hawaiians that it was very diffi-

cult to further restrain them. They were looking with confidence to the United States for an amicable settlement of their grievances, and this had exercised a wholesome influence upon their conduct. Any sudden announcement of an adverse result, or any attempt upon the dignity or life of the Queen, might, in their judgment, precipitate the most serious consequences.

Under this state of affairs, which was known in part, although not fully, to the Provisional Government, the policy of silence, to which you advised, until the time had arrived for definite action, was unquestionably wise and humane. My deliberate judgment is that a different course would have proved disastrous.

No one can estimate to what extent the presence of the different war vessels has prevented demonstrations of marked or other violence.

I need not assure you that I have endeavored faithfully to comply with the views and instructions of the President in regard to the military or naval forces of the United States. The two war ships now here were here when I came. During the month of last August a general license had been granted Admiral Skerrett by the Provisional Government to land and drill his forces whenever he so desired. On the 29th day of November, as has been stated in my dispatch No. 8 of December 5, the Provisional Government addressed me a note revoking this license, which action on behalf of our Government was promptly acquiesced in. No such privilege has been since exercised. So punctilious has been the doctrine of non-intervention that when the band of the *Philadelphia* came ashore one afternoon during a reception of some of the ladies of the navy Admiral Irwin's attention having been called to the fact that it had excited some comment he promptly issued an order that there should be no repetition of this incident.

The Japanese and English legations have been guarded by marines from their respective vessels, but no American soldier has been stationed here, and none will be. No official communication has been conveyed from me to the Provisional Government by any representative of the naval forces of the United States; nor did I, under my instructions, feel at liberty, as I otherwise gladly would have done, to consult with the admiral and high officers in command of our fleet, whose clear and intelligent judgment would have been of great advantage to me in the frequent and delicate questions that have arisen.

In a word, neither directly nor indirectly have I conveyed or countenanced the idea that our Government proposed to interfere by force in the domestic affairs of these islands. My visits to the United States men-of-war have for this reason been limited to two or three social occasions.

There has been, therefore, as little foundation for criticism in this direction as there was for the temporary secrecy observed, as we have seen, as a safeguard against sudden outbreak and mob violence.

Under these circumstances, and guided by your imperative instructions, I submitted the decision of the President as one which was of the greatest gravity and importance. What the answer will be I do not know, but hope to be able to report in a very short time, as President Dole stated that the Provisional Government would take the matter under its immediate advisement.

I have, etc.,

ALBERT S. WILLIS.

HAWAIIAN ISLANDS.

[Inclosure No. 1 with No. 17.]

*Mr. Dole to Mr. Willis.*DEPARTMENT OF FOREIGN AFFAIRS,
Honolulu, Hawaiian Islands, December 18, 1893.

SIR: I am informed that you are in communication with Liliuokalani, the ex-Queen, with a view of re-establishing the monarchy in the Hawaiian Islands and of supporting her pretensions to the sovereignty. Will you inform me if this report is true or if you are acting in any way hostile to this Government.

I appreciate fully the fact that any such action upon your part in view of your official relations with this Government would seem impossible; but as the information has come to me from such sources that I am compelled to notice it, you will pardon me for pressing you for an immediate answer.

Accept the assurances of distinguished consideration with which I have the honor to be sir,

Your excellency's obedient, humble servant,

SANFORD B. DOLE,
Minister of Foreign Affairs.

[Inclosure No. 2 with No. 17.]

*Mr. Willis to Mr. Dole.*LEGATION OF THE UNITED STATES,
Honolulu, December 19, 1893.

SIR: I have the honor to inform you that I have a communication from my Government which I desire to submit to the President and ministers of your Government at any hour to-day which it may please you to designate.

With high regard and sincere respect, I am, etc.,

ALBERT S. WILLIS.

[Inclosure No. 3 with No. 17.]

*Memorandum.***MR. PRESIDENT AND GENTLEMEN:**

The President of the United States has very much regretted the delay in the consideration of the Hawaiian question, but it has been unavoidable. So much of it as has occurred since my arrival has been due to certain conditions precedent, compliance with which was required before I was authorized to confer with you. The President also regrets, as most assuredly do I, that any seeming secrecy should have surrounded the interchange of views between our two Governments. I may say this, however, that the secrecy thus far observed, has been in the interest and for the safety of all your people.

I need hardly premise that the President's action upon the Hawaiian question has been under the dictates of honor and duty? It is now, and has been from the beginning, absolutely free from prejudice and resentment, and entirely consistent with the long-established friendship and treaty ties which have so closely bound together our respective Governments.

The President deemed it his duty to withdraw from the Senate the treaty of annexation which had been signed by the Secretary of State and the agents of your Government, and to dispatch a trusted representative to Hawaii to impartially investigate the causes of your revolution, and ascertain and report the true situation in these islands. This information was needed, the better to enable the President to discharge a delicate and important duty. Upon the facts embodied in Mr. Blount's reports, the President has arrived at certain conclusions and determined upon a certain course of action with which it becomes my duty to acquaint you.

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 yielded to the armed forces of the United States then quartered in Honolulu, relying on 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.

In view of these conclusions, I was instructed by the President to take advantage of an early opportunity to inform the Queen of this determination and of his views as to the responsibility of our Government.

The President, however, felt that we, by our original interference, had incurred responsibilities to the whole Hawaiian community, and that it would not be just to put one party at the mercy of the other. I was, therefore, instructed, at the same time, to inform the Queen that when reinstated, that the President expected that she would pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are or who 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.

In obedience to the command of the President I have secured the Queen's agreement to this course, and I now read and deliver a writing signed by her and duly attested, a copy of which I will leave with you.

(The agreement was here read.)

It becomes my further duty to advise you, sir, the executive of the Provisional Government and your ministers, of the President's determination of the question, which your action and that of the Queen devolved upon him, and that you are expected to promptly relinquish to her her constitutional authority.

And now, Mr. President, and gentlemen of the Provisional Government, with a deep and solemn sense of the gravity of the situation and with the earnest hope that your answer will be inspired by that high patriotism which forgets all self-interest, in the name and by the authority of the United States of America, I submit to you the question, "Are you willing to abide by the decision of the President?"

Mr. Willis to Mr. Gresham.

[Confidential.]

No. 18.]

LEGATION OF THE UNITED STATES,
Honolulu, December 23, 1893.—12 midnight.

SIR: President Dole has just delivered in person at this hour (midnight) the answer of the Provisional Government, declining for reasons therein stated to accept the decision of the President of the United States, a copy of which is herewith inclosed.

The revenue cutter *Corwin* is under sailing orders and will leave here in a few minutes for San Francisco. The captain has been instructed to slow up, if necessary, and enter the harbor of San Francisco at night and to deliver in person the dispatches numbered 14, 15, 16, 17, 18, and 19 to our dispatch agent at that place.

The object of this is to enable the President to receive these official

communications before any intimation of their character can be telegraphed.

I will on Tuesday acknowledge the receipt of the answer of the Provisional Government, notifying it that the President of the United States will be informed thereof, and that no further steps will be taken by me until I shall have heard from him. I shall deliver a similar communication to the Queen.

The very great excitement prevailing here and the peculiar conditions surrounding this people prompt the above course, which, I trust, will meet with the approbation of the President and of yourself.

I think it proper to acknowledge in this public way the efficient services rendered to the Government of the United States by our consul-general, Mr. Mills, since my arrival at this place.

I have, etc.,

ALBERT S. WILLIS.

[Inclosure with No. 18.]

Mr. Dole to Mr. Willis.

DEPARTMENT OF FOREIGN AFFAIRS,
Honolulu, December 23, 1893.

SIR: Your excellency's communication of December 19, announcing the conclusion which the President of the United States of America has finally arrived at respecting the application of this Government for a treaty of political union with that country, and referring also to the domestic affairs of these islands, has had the consideration of the Government.

While it is with deep disappointment that we learn that the important proposition which we have submitted to the Government of the United States, and which was at first favorably considered by it, has at length been rejected, we have experienced a sense of relief that we are now favored with the first official information upon the subject that has been received through a period of over nine months.

While we accept the decision of the President of the United States, declining further to consider the annexation proposition, as the final conclusion of the present administration, we do not feel inclined to regard it as the last word of the American Government upon this subject, for the history of the mutual relations of the two countries, of American effort and influence in building up the Christian civilization which has so conspicuously aided in giving this country an honorable place among independent nations, the geographical position of these islands, and the important and, to both countries, profitable reciprocal commercial interests which have long existed, together with our weakness as a sovereign nation, all point with convincing force to political union between the two countries as the necessary logical result from the circumstances mentioned. This conviction is emphasized by the favorable expression of American statesmen over a long period in favor of annexation, conspicuous among whom are the names of W. L. Marcy, William H. Seward, Hamilton Fish, and James G. Blaine, all former Secretaries of State, and especially so by the action of your last administration in negotiating a treaty of annexation with this Government and sending it to the Senate with a view to its ratification.

We shall therefore continue the project of political union with the United States as a conspicuous feature of our foreign policy, confidently hoping that sooner or later it will be crowned with success, to the lasting benefit of both countries.

The additional portion of your communication referring to our domestic affairs with a view of interfering therein, is a new departure in the relations of the two governments. Your information that the President of the United States expects this Government "to promptly relinquish to her (meaning the ex-Queen) her constitutional authority," with the question "are you willing to abide by the decision of the President?" might well be dismissed in a single word, but for the circumstance that your communication contains, as it appears to me, misstatements and erroneous conclusions based thereon, that are so prejudicial to this Government that I can not permit them to pass unchallenged; moreover, the importance and menacing character of this proposition make it appropriate for me to discuss somewhat fully the questions raised by it.

We do not recognize the right of the President of the United States to interfere in our domestic affairs. Such right could be conferred upon him by the act of this

Government, and by that alone, or it could be acquired by conquest. This I understand to be the American doctrine, conspicuously announced from time to time by the authorities of your Government.

President Jackson said in his message to Congress in 1836: "The uniform policy and practice of the United States is to avoid all interference in disputes which merely relate to the internal government of other nations, and eventually to recognize the authority of the prevailing party, without reference to the merits of the original controversy."

This principle of international law has been consistently recognized during the whole past intercourse of the two countries, and was recently reaffirmed in the instructions given by Secretary Gresham to Commissioner Blount on March 11, 1893, and by the latter published in the newspapers in Honolulu in a letter of his own to the Hawaiian public. The words of these instructions which I refer to are as follows: "The United States claim no right to interfere in the political or domestic affairs or in the internal conflicts of the Hawaiian Islands other than as herein stated (referring to the protection of American citizens) or for the purpose of maintaining any treaty or other rights which they possess." The treaties between the two countries confer no right of interference.

Upon what, then, Mr. Minister, does the President of the United States base his right of interference? Your communication is without information upon this point, excepting such as may be contained in the following brief and vague sentences: "She (the ex-Queen) was advised and assured by her ministers and leaders of the movement for the overthrow of her government that if she surrendered under protest her case would afterward be fairly considered by the President of the United States. The Queen finally yielded to the armed forces of the United States, then quartered in Honolulu, relying on 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." Also, "it becomes my further duty to advise you, sir, the Executive of the Provisional Government, and your ministers, of the President's determination of the question which your action and that of the Queen devolved upon him, and that you are expected to promptly relinquish to her her constitutional authority."

I understand that the first quotation is referred to in the following words of the second, "which your action and that of the Queen devolved upon him" (the President of the United States), and that the President has arrived at his conclusions from Commissioner Blount's report. We have had as yet no opportunity of examining this document, but from extracts published in the papers and for reasons set forth hereafter, we are not disposed to submit the fate of Hawaii to its statements and conclusions. As a matter of fact no member of the executive of the Provisional Government has conferred with the ex-Queen, either verbally or otherwise, from the time the new Government was proclaimed till now, with the exception of one or two notices which were sent to her by myself in regard to her removal from the palace and relating to the guards which the Government first allowed her and perhaps others of a like nature. I infer that a conversation which Mr. Damon, then a member of the advisory council, is reported by Mr. Blount to have had with the ex-Queen on January 17, and which has been quoted in the newspapers, is the basis of this astounding claim of the President of the United States of his authority to adjudicate upon our right as a government to exist.

Mr. Damon, on the occasion mentioned, was allowed to accompany the cabinet of the former Government, who had been in conference with me and my associates, to meet the ex-Queen. He went informally, without instructions and without authority to represent the Government or to assure the ex-Queen "that if she surrendered under protest her case would afterwards be fairly considered by the President of the United States." Our ultimatum had already been given to the members of the ex-cabinet who had been in conference with us. What Mr. Damon said to the ex-Queen he said on his individual responsibility and did not report it to us. Mr. Blount's report of his remarks on that occasion furnish to the Government its first information of the nature of those remarks. Admitting for argument's sake that the Government had authorized such assurances, what was "her case" that was afterwards to "be fairly considered by the President of the United States?"

Was it the question of her right to subvert the Hawaiian constitution and to proclaim a new one to suit herself, or was it her claim to be restored to the sovereignty, or was it her claim against the United States for the alleged unwarrantable acts of Minister Stevens, or was it all these in the alternative; who can say? But if it had been all of these, or any of them, it could not have been more clearly and finally decided by the President of the United States in favor of the Provisional Government than when he recognized it without qualification and received its accredited commissioners, negotiated a treaty of annexation with them, received its accredited envoy extraordinary and minister plenipotentiary, and accredited successively two envoys extraordinary and ministers plenipotentiary to it; the ex-Queen in the mean-

time being represented in Washington by her agent who had full access to the Department of State.

The whole business of the Government with the President of the United States is set forth in the correspondence between the two governments and the acts and statements of the minister of this Government at Washington and the annexation commissioners accredited to it. If we have submitted our right to exist to the United States, the fact will appear in that correspondence and the acts of our minister and commissioners. Such agreement must be shown as the foundation of the right of your Government to interfere, for an arbitrator can be created only by the act of two parties.

The ex-Queen sent her attorney to Washington to plead her claim for a reinstatement in power, or failing that for a money allowance or damages. This attorney was refused passage on the Government dispatch boat, which was sent to San Francisco with the annexation commissioners and their message. The departure of this vessel was less than two days after the new Government was declared, and the refusal was made promptly upon receiving the request therefor either on the day the Government was declared or on the next day. If an intention to submit the question of the reinstatement of the ex-Queen had existed, why should her attorney have been refused passage on this boat? The ex-Queen's letter to President Harrison, dated January 18, the day after the new Government was proclaimed, makes no allusion to any understanding between her and the Government for arbitration. Her letter is as follows :

"His Excellency BENJAMIN HARRISON,
"President of the United States:

"MY GREAT AND GOOD FRIEND: It is with deep regret that I address you on this occasion. Some of my subjects aided by aliens, have renounced their loyalty and revolted against the constitutional Government of my Kingdom. They have attempted to depose me and to establish a provisional government in direct conflict with the organic law of this Kingdom. Upon receiving incontestible proof that his excellency the minister plenipotentiary of the United States, aided and abetted their unlawful movements and caused United States troops to be landed for that purpose, I submitted to force, believing that he would not have acted in that manner unless by the authority of the Government which he represents.

"This action on my part was prompted by three reasons: The futility of a conflict with the United States; the desire to avoid violence, bloodshed and the destruction of life and property, and the certainty which I feel that you and your Government will right whatever wrongs may have been inflicted upon us in the premises.

"In due time a statement of the true facts relating to this matter will be laid before you, and I live in the hope that you will judge uprightly and justly between myself and my enemies. This appeal is not made for myself personally, but for my people, who have hitherto always enjoyed the friendship and protection of the United States.

"My opponents have taken the only vessel which could be obtained here for the purpose, and hearing of their intention to send a delegation of their number to present their side of this conflict before you, I requested the favor of sending by the same vessel an envoy to you, to lay before you my statement, as the facts appear to myself and my loyal subjects.

"This request has been refused, and I now ask you that in justice to myself and to my people that no steps be taken by the Government of the United States until my cause can be heard by you.

"I shall be able to dispatch an envoy about the 2d of February, as that will be the first available opportunity hence, and he will reach you by every possible haste that there may be no delay in the settlement of this matter.

"I pray you, therefore, my good friend, that you will not allow any conclusions to be reached by you until my envoy arrives.

"I beg to assure you of the continuance of my highest consideration.

"LILIUOKALANI R.

"HONOLULU, January 18, 1893."

If any understanding had existed at that time between her and the Government to submit the question of her restoration to the United States, some reference to such an understanding would naturally have appeared in this letter, as every reason would have existed for calling the attention of the President to that fact, especially as she then knew that her attorney would be seriously delayed in reaching Washington. But there is not a word from which such an understanding can be predicated. The Government sent its commissioners to Washington for the sole object of procuring the confirmation of the recognition by Minister Stevens of the new Government and to enter into negotiations for political union with the United States. The protest of the ex-Queen, made on January 17, is equally with the let-

ter devoid of evidence of any mutual understanding for a submission of her claim to the throne to the United States. It is very evidently a protest against the alleged action of Minister Stevens as well as the new Government, and contains a notice of her appeal to the United States.

The document was received exactly as it would have been received if it had come through the mail. The indorsement of its receipt upon the paper was made at the request of the individual who brought it as evidence of its safe delivery. As to the ex-Queen's notice of her appeal to the United States, it was a matter of indifference to us. Such an appeal could not have been prevented, as the mail service was in operation as usual. That such a notice, and our receipt of it without comment, should be made a foundation of a claim that we had submitted our right to exist as a government to the United States had never occurred to us until suggested to us by your Government. The protest is as follows:

"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 representative and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.

"Done at Honolulu the 17th day of January, A. D. 1893.

"LILIUOKALANI, R.
 "SAMUEL PARKER,
 "Minister of Foreign Affairs.
 "WILLIAM H. CORNWELL,
 "Minister of Finance.
 "JOHN F. COLBURN,
 "Minister of the Interior.
 "A. P. PETERSON,
 "Attorney-General.

"S. B. DOLE, Esq., and others,

"Composing the Provisional Government of the Hawaiian Islands."

(Indorsed:) "Received by the hands of the late cabinet this 17th day of January, A. D. 1893. Sanford B. Dole, chairman of executive council of Provisional Government."

You may not be aware, but such is the fact, that at no time until the presentation of the claim of the President of the United States of his right to interfere in the internal affairs of this country, by you on December 19, has this Government been officially informed by the United States Government that any such course was contemplated. And not until the publication of Mr. Gresham's letter to the President of the United States on the Hawaiian question had we any reliable intimation of such a policy. The adherents of the ex-Queen have indeed claimed from time to time that such was the case, but we have never been able to attach serious importance to their rumors to that effect, feeling secure in our perfect diplomatic relations with your country, and relying upon the friendship and fairness of a government whose dealings with us had ever shown full recognition of our independence as a sovereign power, without any tendency to take advantage of the disparity of strength between the two countries.

If your contention that President Cleveland believes that this Government and the ex-Queen have submitted their respective claims to the sovereignty of this country to the adjudication of the United States is correct, then, may I ask, when and where has the President held his court of arbitration? This Government has had no notice of the sitting of such a tribunal and no opportunity of presenting evidence of its claims. If Mr. Blount's investigations were a part of the proceedings of such a court, this Government did not know it and was never informed of it; indeed, as I have mentioned above, we never knew until the publication of Secretary Gresham's letter to President Cleveland a few weeks ago, that the American Executive had a policy of interference under contemplation. Even if we had known that Mr. Blount was authoritatively acting as a commissioner to take evidence upon the question of the restoration of the ex-Queen, the methods adopted by him in making his investigations were, I submit, unsuitable to such an examination or any examination upon which human interests were to be adjudicated.

As I am reliably informed, he selected his witnesses and examined them in secret, freely using leading questions, giving no opportunity for a cross-examination, and often not permitting such explanations by witnesses themselves as they desired to make of evidence which he had drawn from them. Is it hardly necessary for me to suggest that under such a mode of examination some witnesses would be almost helpless in the hands of an astute lawyer, and might be drawn into saying things which would be only half-truths, and standing alone would be misleading or even false in effect. Is it likely that an investigation conducted in this manner could result in a fair, full, and truthful statement of the case in point? Surely the destinies of a friendly Government, admitting by way of argument that the right of arbitration exists, may not be disposed of upon an *ex parte* and secret investigation made without the knowledge of such Government or an opportunity by it to be heard or even to know who the witnesses were.

Mr. Blount came here as a stranger and at once entered upon his duties. He devoted himself to the work of collecting information, both by the examination of witnesses and the collection of statistics and other documentary matter, with great energy and industry, giving up, substantially, his whole time to its prosecution. He was here but a few months, and during that time was so occupied with this work that he had little opportunity left for receiving those impressions of the state of affairs which could best have come to him, incidentally, through a wide social intercourse with the people of the country and a personal acquaintance with its various communities and educational and industrial enterprises. He saw the country from his cottage in the center of Honolulu mainly through the eyes of the witnesses whom he examined. Under these circumstances is it probable that the most earnest of men would be able to form a statement that could safely be relied upon as the basis of a decision upon the question of the standing of a government?

In view, therefore, of all the facts in relation to the question of the President's authority to interfere and concerning which the members of the executive were actors and eye-witnesses, I am able to assure your excellency that by no action of this Government, on the 17th day of January last or since that time, has the authority devolved upon the President of the United States to interfere in the internal affairs of this country through any conscious act or expression of this Government with such an intention.

You state in your communication—

"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; that he kept his promise by causing a detachment of troops to be landed from the *Boston* on the 16th of January, 1893, 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."

Without entering into a discussion of the facts I beg to state in reply that I am unable to judge of the correctness of Mr. Blount's report from which the President's conclusions were drawn, as I have had no opportunity of examining such report. But I desire to specifically and emphatically deny the correctness of each and every one of the allegations of fact contained in the above-quoted statement; yet, as the President has arrived at a positive opinion in his own mind in the matter, I will refer to it from his standpoint.

My position, is briefly, this: If the American forces illegally assisted the revolutionists in the establishment of the Provisional Government that Government is not responsible for their wrong-doing. It was purely a private matter for discipline between the United States Government and its own officers. There is, I submit, no precedent in international law for the theory that such action of the American troops has conferred upon the United States authority over the internal affairs of this Government. Should it be true, as you have suggested, that the American Government made itself responsible to the Queen, who, it is alleged lost her throne through such action, that is not a matter for me to discuss, except to submit that if such be the case, it is a matter for the American Government and her to settle between them. This Government, a recognized sovereign power, equal in authority with the United States Government and enjoying diplomatic relations with it, can not be destroyed by it for the sake of discharging its obligations to the ex-Queen.

Upon these grounds, Mr. Minister, in behalf of my Government I respectfully protest against the usurpation of its authority as suggested by the language of your communication.

It is difficult for a stranger like yourself, and much more for the President of the United States, with his pressing responsibilities, his crowding cares and his want of familiarity with the condition and history of this country and the inner life of its

people, to obtain a clear insight into the real state of affairs and to understand the social currents, the race feelings and the customs and traditions which all contribute to the political outlook. We, who have grown up here or who have adopted this country as our home, are conscious of the difficulty of maintaining a stable government here. A community which is made up of five races, of which the larger part but dimly appreciate the significance and value of representative institutions, offers political problems which may well tax the wisdom of the most experienced statesman.

For long years a large and influential part of this community, including many foreigners and native Hawaiians, have observed with deep regret the retrogressive tendencies of the Hawaiian monarchy, and have honorably striven against them, and have sought through legislative work, the newspapers, and by personal appeal and individual influence to support and emphasize the representative features of the monarchy and to create a public sentiment favorable thereto, and thereby to avert the catastrophe that seemed inevitable if such tendencies were not restrained. These efforts have been met by the last two sovereigns in a spirit of aggressive hostility. The struggle became at length a well-defined issue between royal prerogative and the right of representative government, and most bitterly and unscrupulously has it been carried on in the interests of the former. The King's privilege of importing goods for his own use without paying the duties thereon was abused to the extent of admitting large quantities of liquors, with which to debauch the electorate. He promoted the election of Government officers, both executive and judicial, to the legislative assembly, and freely appointed to office elected members thereof.

In the legislature of 1886, of which I was a member, the party supporting the Government was largely in the majority, and nearly every member of such majority held some appointment from the Government, and some of them as many as two or three, thereby effectually placing the legislative branch of the Government under the personal and absolute control of the King. The constitutional encroachments, lawless extravagance, and scandalous and open sales of patronage and privilege to the highest bidder by Kalakaua brought in at length the revolution of 1887, which had the full sympathy and moral support of all the diplomatic representatives in Honolulu, including Minister Merrill, who was at that time President Cleveland's minister here.

This revolution was not an annexation movement in any sense, but tended toward an independent republic, but, when it had the monarchy in its power, conservative counsels prevailed, and a new lease of life was allowed that institution on the condition of royal fidelity to the new constitution, which was then promulgated and which greatly curtailed the powers of the sovereign. Kalakaua was not faithful to this compact, and sought as far as possible to evade its stipulations. The insurrection of 1889 was connived at by him, and the household guards under his control were not allowed to take part in suppressing it. The Princess Liliuokalani was in full sympathy with this movement, being a party to it, and furnished her suburban residence to the insurgents for their meetings. The arrangements were there made, and the insurgents marched thence for their attack upon the Government. The affair was suppressed in a few hours of fighting, with some loss of life to the insurgents, by the party which carried through the revolution of 1887.

The ex-Queen's rule was even more reckless and retrogressive than her brother's. Less politic than he, and with less knowledge of affairs, she had more determination and was equally unreliable and deficient in moral principle. She, to all appearance, unhesitatingly took the oath of office to govern according to the constitution, and evidently regarding it merely as a formal ceremony began, according to her own testimony to Mr. Blount, to lay her plans to destroy the constitution and replace it with one of her own creation. With a like disregard of its sanctions, she made the most determined efforts to control all of the appointments to office, both executive and judicial. The session of the legislature of 1892 was the longest that had ever occurred in our history, and was characterized by a most obstinate struggle for personal control of the Government and the legislature on the part of the Queen. This was strenuously resisted by the opposition.

During this contest four ministerial cabinets were appointed and unseated, and the lottery-franchise bill, which had been withdrawn early in the session for want of sufficient support, was at the last moment, when the opposition was weakened by the absence of several of its members, again brought forward and passed through the exercise of improper and illegitimate influences upon the legislators, among which were personal appeals on the part of the Queen to them. The cabinet which represented the opposition and the majority of the legislature which the Queen had been compelled to appoint was unseated by similar means, and with a new cabinet of her own choice the legislature was prorogued. This lottery franchise was of a character corresponding with similar institutions which have been driven out of every State of the American Union by an indignant public sentiment. If it had been established here it would in a brief period have obtained full control of the Government patronage and corrupted the social and political life of the people.

Although the situation at the close of the session was deeply discouraging to the community, it was accepted without any intention of meeting it by other than legal means. The attempted *coup d'état* of the Queen followed, and her ministers, threatened with violence, fled to the citizens for assistance and protection; then it was that the uprising against the Queen took place, and, gathering force from day to day, resulted in the proclamation of the Provisional Government and the abrogation of the monarchy on the third day thereafter.

No man can correctly say that the Queen owed her downfall to the interference of American forces. The revolution was carried through by the representatives, now largely reinforced, of the same public sentiment which forced the monarchy to its knees in 1887, which suppressed the insurrection of 1889, and which for twenty years has been battling for representative government in this country. If the American forces had been absent the revolution would have taken place, for the sufficient causes for it had nothing to do with their presence.

I, therefore, in all friendship of the Government of the United States, which you represent, and desiring to cherish the good will of the great American people, submit the answer of my Government to your proposition, and ask that you will transmit the same to the President of the United States for his consideration.

Though the Provisional Government is far from being "a great power" and could not long resist the forces of the United States in a hostile attack, we deem our position to be impregnable under all legal precedents, under the principles of diplomatic intercourse, and in the forum of conscience. We have done your Government no wrong; no charge of discourtesy is or can be brought against us. Our only issue with your people has been that, because we revered its institutions of civil liberty, we have desired to have them extended to our own distracted country, and because we honor its flag and deem that its beneficent and authoritative presence would be for the best interests of all of our people, we have stood ready to add our country, a new star, to its glory, and to consummate a union which we believed would be as much for the benefit of your country as ours. If this is an offense, we plead guilty to it.

I am instructed to inform you, Mr. Minister, that the Provisional Government of the Hawaiian Islands respectfully and unhesitatingly declines to entertain the proposition of the President of the United States that it should surrender its authority to the ex-Queen.

This answer is made not only upon the grounds hereinbefore set forth, but upon our sense of duty and loyalty to the brave men whose commissions we hold, who have faithfully stood by us in the hour of trial, and whose will is the only earthly authority we recognize. We can not betray the sacred trust they have placed in our hands, a trust which represents the cause of Christian civilization in the interests of the whole people of these islands.

With assurances of the highest consideration,
I have, etc.,

SANFORD B. DOLE,
Minister of Foreign Affairs.

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

Mr. Willis to Mr. Gresham.

No. 19.]

DECEMBER 23, 1893.

This communication simply transmits minister's salary account.

[Telegram.]

WASHINGTON, *January 12, 1894.*

W. A. COOPER,
*U. S. Dispatch Agent,
Post-Office Building, San Francisco, Cal.:*

Forward following telegram to Hon. A. S. Willis, U. S. minister,
Honolulu, by steamer *Mariposa* to-morrow.

W. Q. GRESHAM.

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



L-494 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

MAY 27, 2005 08:01 AM

Doc No(s) 3273864
on Cert(s) 278,340

Issuance of Cert(s) 750,398



20 1/2 Z4

/s/ CARL T. WATANABE
ASSISTANT REGISTRAR
CONVEYANCE TAX: \$43.00

I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances.

Maria C. De Lima
Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii

LAND COURT

REGULAR SYSTEM

Return By Mail Pick-Up To:

LEILANI MATTSON
ISLAND COMMUNITY LENDING
65-1158 Mamalahoa Highway, Suite 16
Kamuela, HI 96743

TITLE NO.: 200513372 -D
ESCROW NO.: A5-301-0499
MARCIA C. DE LIMA

TOTAL NUMBER OF PAGES: 9

LG
1

TITLE OF DOCUMENT:

WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: SHUICHI TAKI and TAKAKO TAKI, husband and wife, whose mailing
address is 7-11 3 Chome, Akita, Japan

GRANTEE: HARRIS BRIGHT, a single man, whose mailing address is P. O. Box 385207,
Waikoloa, HI 96738

TAX MAP KEY (3) 1-5-046-019
This document affects TCT No. 278,340

4817-8558-4384/K20279/4-22-05



WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That **SHUICHI TAKI and TAKAKO TAKI, husband and wife**, whose mailing address is **7-11 3 Chome, Akita, Japan**, hereinafter called the "Grantor", for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration to the Grantor paid by **HARRIS BRIGHT, a single man**, whose mailing address is **P. O. Box 385207, Waikoloa, HI 96738**, hereinafter called the "Grantee", the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the Grantee all of that certain real property designated on the tax maps of the Third Taxation Division, State of Hawaii, as Tax Map Key **1-5-046-019**, more particularly described in Exhibit A attached hereto and made a part hereof, subject to the encumbrances noted therein.

TOGETHER WITH ALL and singular the buildings, improvements, rights, tenements, hereditaments, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith.

TO HAVE AND TO HOLD the same unto the Grantee, as **his sole and separate property**, his heirs, personal representatives and assigns, in fee simple forever.

AND THE SAID GRANTOR does hereby covenant with the Grantee that the Grantor is lawfully seised in fee simple of said granted premises and that the said premises are free and clear of all encumbrances except as aforesaid, and except for assessments for real property taxes. And the said Grantor further covenants and agrees that the Grantor has good right to sell and convey the said premises in the manner aforesaid; that the Grantor will **WARRANT AND DEFEND** the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee", as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, heirs, executors, personal representatives, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

IN WITNESS WHEREOF, the Grantor has executed these presents on this 10 day of MAY, 2005.

SHUICHI TAKI
SHUICHI TAKI

TAKAKO TAKI
TAKAKO TAKI

APPROVED AS TO FORM
CARLSMITH BALL LLP

BY Robert D. Triantos
4-22-05

Registration No. 48



CERTIFICATE

This is to certify that the annexed Notarial Certificate has been executed by Notary Public, duly authorized and practising in Akita, Japan, and that the Official seal appearing on the same is genuine.

Date May 11. 2005

Director of the Akita District Legal Affairs Bureau



総公証第48号

証 明

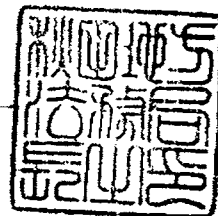
秋田地方法務局所属公証人 高橋 章

平成17年5月10日付登簿第85号

この認証の付与は、在職中の公証人がその権限に基づいてしたものであり、かつ、その押印は、真実のものであることを証明する。

平成17年5月11日

秋田地方法務局長 鈴木 眞





APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country: **JAPAN**

This public document

2. has been signed by **Akira TAKAHASHI**

3. acting in the capacity of **Notary Public of the Akita
District Legal Affairs Bureau**

4. bears the seal/stamp of **Akira TAKAHASHI, Notary Public**

Certified

5. at **Tokyo**

6. **MAY 13 2005**

7. by the **Ministry of Foreign Affairs**

8. No. **0004860**

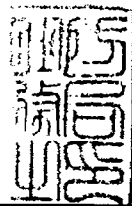
9. Seal/stamp:



10. Signature:

Kazutoyo OYABE

For the Minister for Foreign Affairs



平成 17 年 認証登簿番号 第 85 号

認 証



嘱託人 瀧 秀一 及び 瀧 高子 は、本職の面前で添付書面に
署名した。 _____

よってこれを認証する。 _____

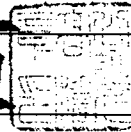
平成 17 年 5 月 10 日 日本職役場において。 _____

秋田県秋田市大町三丁目 5 番 8 号 秋田日本信販ビル 3 階

秋田地方法務局所属

公 証 人

高橋 章



Registered No. 85

NOTARIAL CERTIFICATE

This is to certify that Shuichi Taki and Takako Taki
signed the attached document in my very presence on this 10th
day of May, 2005.

AKIRA TAKAHASHI

Notary Akira Takahashi

Akita Nippon shinpan Bldg. 3F 5-8, Omachi 3-chome,

Akita City, Akita Prefecture

Akita District Legal Affairs Bureau

公 証 人 役 場

EXHIBIT "A"

All of those certain parcels of land situate at Keaau, District of Puna, Island and County of Hawaii, State of Hawaii, described as follows:

-PARCEL FIRST:-

LOT 1549, area 1.000 acre, more or less, BLOCK 7, as shown on Map 58, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1053 (amended) of W. H. Shipman, Limited;

-PARCEL SECOND:-

An undivided 1/5750 interest in Lots 60, 62, 8297, 8363, 8385, 8387 and 3115 in Block 7, and Lot 1 in Block 10; as shown on Maps 10, 10, 55, 56, 56, 57, 58 and 65, respectively, of said Land Court Application No. 1053 (amended); and Lot 4-B, as shown on Map 2 of Land Court Application No. 1689 of W. H. Shipman, Limited, to be used in common with others entitled thereto, for roadway and utility purposes only;

Being the land(s) described in Transfer Certificate of Title No. 278,340 issued to SHUICHI TAKI and TAKAKO TAKI, husband and wife, as Joint Tenants.

BEING THE PREMISES ACQUIRED BY LAND COURT DEED

GRANTOR: YOSHIO IKEDA and HIROKO IKEDA, husband and wife

GRANTEE: SHUICHI TAKI and TAKAKO TAKI, husband and wife, as Joint Tenants

DATED: December 9, 1985

FILED: Land Court Document No. 1341884

SUBJECT, HOWEVER TO:

1. **-AS TO PARCEL SECOND:-**

(A) **-AS TO LOTS 60 AND 62 ONLY:-** A right of way in favor of Lot 58, as granted by Deed dated September 24, 1945, filed as Land Court Document No. 104733.

(B) **-AS TO LOT 62 ONLY:-** Designation of Easement "29" for utility purposes, as shown on Map 10, as set forth by Land Court Order No. 17102, filed April 24,

- 1959.
- (C) -AS TO LOT 8387 ONLY:- Designation of Easement "30" for utility purposes, as shown on Map 57, as set forth by Land Court Order No. 17102, filed April 24, 1959.
- (D) -AS TO LOTS 62 AND 8387 ONLY:- Grant in favor of Hawaii Electric Light Company, Inc., dated April 24, 1959, filed as Land Court Document No. 236028; granting easements over said Easements "29" and "30".
- (E) -AS TO LOT 4-B ONLY:-
- (1) Reservation in favor of the State of Hawaii of all mineral and metallic mines.
 - (2) Lease of right of way for utility purposes in favor of GTE Hawaiian Telephone Company Incorporated, now known as Verizon Hawaii, Inc., dated May 6, 1955, filed as Land Court Document No. 181820, for a term of 30 years from May 6, 1955, and thereafter from year to year until terminated by either party on ninety (90) days written notice.
 - (3) Unrecorded right of way in favor of Olaa Sugar Company, Limited.
- (F) Exception, reservation and power in favor of Hawaiian Paradise Park Corp., its successors and assigns, to grant licenses, easements and privileges to others in, over, across and through said roadway lots for utilities, access and other service purposes, as set forth in Deed dated June 6, 1979, filed as Land Court Document No. 955755.
- Said exception, reservation and power was assigned to Paradise Hui Hanalike, a Hawaii nonprofit corporation, by that certain Quitclaim Assignment of Reservation of Rights dated December 18, 1985, as referenced in Land Court Order No. 77755, filed April 2, 1986.
- (G) -AS TO LOTS 8297 AND 8387 ONLY:- Final Order of Condemnation filed in Civil No. 89-212 in the Circuit Court of the Third Circuit, State of Hawaii, on August 20, 1990, filed as Land Court Document No. 2276014 on December 4, 1995, in favor of the State of Hawaii, condemning a portion of Lots 8297 and 8387 more particularly described therein. (Not noted on Transfer Certificate of Title referred to herein)
- (H) Various waterline easements and grants appurtenant to all lots entitled thereto.
- (I) Rights of others who own undivided interest(s) in the land described herein.

Exhibit D

Policy of Title Insurance

**Hawaii Standard
Owner's Policy
(1998)**

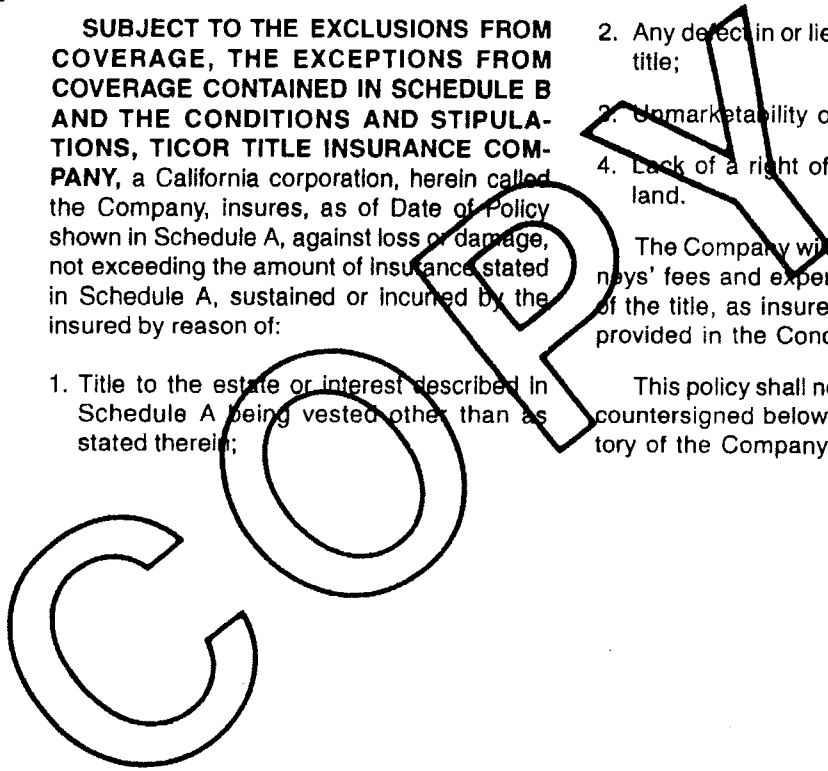
**SUBJECT TO THE EXCLUSIONS FROM
COVERAGE, THE EXCEPTIONS FROM
COVERAGE CONTAINED IN SCHEDULE B
AND THE CONDITIONS AND STIPULA-
TIONS, TICOR TITLE INSURANCE COM-
PANY, a California corporation, herein called
the Company, insures, as of Date of Policy
shown in Schedule A, against loss or damage,
not exceeding the amount of insurance stated
in Schedule A, sustained or incurred by the
insured by reason of:**

- 2. Any defect in or lien or encumbrance on the title;
- 3. Unmarketability of the title;
- 4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.


- 1. Title to the estate or interest described in Schedule A being vested other than as stated therein;

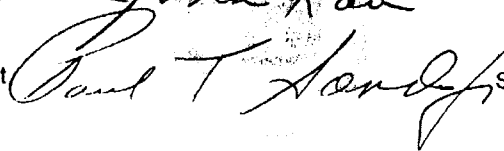
This policy shall not be valid or binding until countersigned below by an authorized signatory of the Company.



Countersigned at Honolulu,
Hawaii, by Title Guaranty
of Hawaii, Incorporated
P.O. Box 3084
Honolulu, Hawaii 96802

TICOR TITLE INSURANCE COMPANY

By  President

Attest  Secretary

Authorized Signatory



Exclusions from Coverage

The following matters are expressly excluded from the coverage of this Policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant or any agent of the insured claimant and not disclosed in writing to the Company by the insured prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.
5. Taxes, assessments or obligations levied or created for any public purpose or improvement, unless the amount thereof has been fixed, is payable and is shown as a lien in the public records at Date of Policy.
6. Any facts, rights, interest or claims which are not recorded in the public records at Date of Policy but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof or of the lessors in any lease of the land.
7. Easements or claims of easements which are not recorded in the public records at Date of Policy.
8. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey or archaeological study would disclose.
9. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
10. Rights or claims of persons or entities other than the insured involving or arising out of: mineral or metallic mines; geothermal resources; water; fishing, commerce or navigation; creation or loss of the land or any portion thereof by accretion, avulsion, erosion or artificial means; persons residing on or otherwise in possession of the land or any portion thereof; trails, roadways or other rights of way, including without limitation any such rights or claims under Chapter 264, Hawaii Revised Statutes.
11. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land, whether furnished before or after Date of Policy and regardless of the legal effective date of any such lien or claim, unless at the Date of Policy such lien or claim was recorded in the public records or filed in the Circuit Court pursuant to Chapter 507, Hawaii Revised Statutes.
12. Any claim arising as a result of the inability or failure of the insured to comply with applicable doing business laws of the State of Hawaii.

Conditions and Stipulations

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, or in Schedule C if not provided for in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in the applicable Schedule, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions from Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants or warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is

adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS: DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves that right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company

to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment in the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle with Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the amount of insurance stated in Schedule A; or

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the amount of insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or Interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT

If the land described in the applicable Schedule consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights

and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-Insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitations, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000, shall be arbitrated only when agreed to by both the Company and the insured; Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision, all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at Tigor Title Insurance Company, Claims Department, P.O. Box 2233, Los Angeles, California 90051.



SCHEDULE A

Premium: \$150.00
Amount of Insurance: \$43,000.00
Date of Policy: May 27, 2005 at 8:01 a.m
Policy No.: T74-000049117
Agent's No.: 200513372

Hawaii Standard Owner's Policy (1998)

1. Name of Insured:
HARRIS BRIGHT, a single man, as Tenant in Severalty, as Fee Owner
2. Title to the estate or interest in the land is vested in:
THE NAMED INSURED
3. The estate or interest in the land which is covered by this policy is:
FEE SIMPLE
4. The land referred to in this policy is described as follows:
See Schedule C.

SCHEDULE B

All matters set forth in the paragraphs below the caption "Exclusions from Coverage" on the inside cover of this Policy and the following matters are expressly excluded from the coverage of this Policy and the Company will not pay loss or damage, costs, attorney's fees or expenses which arise by reason thereof.

1. Real Property Taxes have been fully paid up to and including June 30, 2005.

Tax Key: (3) 1-5-046-019 Area Assessed: 1.000 acre

Land Classification: AGRICULTURAL / NATIVE FORESTS

Street Address: LOT 1549, KEAAU PUNA, HAWAII

-Note:- Attention is invited to the fact that the premises covered herein may be subject to possible rollback or retroactive property taxes.

2. -AS TO PARCEL SECOND:-

(A) -AS TO LOTS 60 AND 62 ONLY:- A right of way in favor of Lot 58, as granted by Deed dated September 24, 1945, filed as Land Court Document No. 104733.

(B) -AS TO LOT 62 ONLY:- Designation of Easement "29" for utility purposes, as shown on Map 10, as set forth by Land Court Order No. 17102, filed April 24, 1959.

(C) -AS TO LOT 8387 ONLY:- Designation of Easement "30" for utility purposes, as shown on Map 57, as set forth by Land Court Order No. 17102, filed April 24, 1959.

SCHEDULE B CONTINUED

- (D) -AS TO LOTS 62 AND 8387 ONLY:- Grant in favor of Hawaii Electric Light Company, Inc., dated April 24, 1959, filed as Land Court Document No. 236028; granting easements over said Easements "29" and "30".
- (E) -AS TO LOT 4-B ONLY:-
- (1) Reservation in favor of the State of Hawaii of all mineral and metallic mines.
 - (2) Lease of right of way for utility purposes in favor of GTE Hawaiian Telephone Company Incorporated, now known as Verizon Hawaii, Inc., dated May 6, 1955, filed as Land Court Document No. 181820, for a term of 30 years from May 6, 1955, and thereafter from year to year until terminated by either party on ninety (90) days written notice.
 - (3) Unrecorded right of way in favor of Olaa Sugar Company, Limited.
- (F) Exception, reservation and power in favor of Hawaiian Paradise Park Corp., its successors and assigns, to grant licenses, easements and privileges to others in, over, across and through said roadway lots for utilities, access and other service purposes, as set forth in Deed dated June 6, 1979, filed as Land Court Document No. 955755.
- Said exception, reservation and power was assigned to Paradise Hui Hanalike, a Hawaii nonprofit corporation, by that certain Quitclaim Assignment of Reservation of Rights dated December 18, 1985, as referenced in Land Court Order No. 77755, filed April 2, 1986.
- (G) -AS TO LOTS 8297 AND 8387 ONLY:- Final Order of Condemnation filed in Civil No. 89-212 in the Circuit Court of the Third Circuit, State of Hawaii, on August 20, 1990, filed as Land Court Document No. 2276014 on December 4, 1995, in favor of the State of Hawaii, condemning a portion of Lots 8297 and 8387 more particularly described therein. (Not noted on Transfer Certificate of Title referred to herein)

SCHEDULE B CONTINUED

(H) Various waterline easements and grants appurtenant to all lots entitled thereto.

(I) Rights of others who own undivided interest(s) in the land described herein.

3. REAL PROPERTY MORTGAGE; SECURITY AGREEMENT; ASSIGNMENT OF RENTS;
AND FINANCING STATEMENT

MORTGAGOR : HARRIS BRIGHT, SINGLE

MORTGAGEE : HAWAII FIRST FEDERAL CREDIT UNION, a federal credit
union

DATED : May 10, 2005

FILED : Land Court Document No. 3273865

AMOUNT : \$214,200.00

END OF SCHEDULE B

SCHEDULE C

The land referred to in this policy is described as follows:

All of those certain parcels of land situate at Keaau, District of Puna, Island and County of Hawaii, State of Hawaii, described as follows:

-PARCEL FIRST:-

LOT 1549, area 1.000 acre, more or less, BLOCK 7, as shown on Map 58, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1053 (amended) of W. H. Shipman, Limited;

-PARCEL SECOND:-

An undivided 1/5750 interest in Lots 60, 62, 8297, 8363, 8385, 8387 and 3115 in Block 7, and Lot 1 in Block 10; as shown on Maps 10, 10, 55, 56, 56, 57, 58 and 65, respectively, of said Land Court Application No. 1053 (amended); and Lot 4-B, as shown on Map 2 Land Court Application No. 1689 of W. H. Shipman, Limited, to be used in common with others entitled thereto, for roadway and utility purposes only;

Being the land(s) described in Transfer Certificate of Title No. 750,398 issued to HARRIS BRIGHT, a single man, as Tenant in Severalty.

SCHEDULE C CONTINUED

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : SHUICHI TAKI and TAKAKO TAKI, husband and wife

GRANTEE : HARRIS BRIGHT, a single man, as Tenant in Severalty

DATED : May 10, 2005

FILED : Land Court Document No. 3273864

END OF SCHEDULE C

GENERAL NOTES

1. There is hereby omitted from any covenants, conditions and reservations contained herein any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin, unless and only to the extent that said covenant (i) is exempt under Chapter 42, Section 3607 of the United States Code or (ii) relates to handicap but does not discriminate against handicapped persons.

Attachment ‘F’

THE CONTINUITY OF THE HAWAIIAN STATE AND THE LEGITIMACY OF THE
ACTING GOVERNMENT OF THE HAWAIIAN KINGDOM

August 4, 2013

By David Keanu Sai, Ph.D.*

1. THE BRIEF

- 1.1. It has been 120 years since the United States of America, hereafter referred to as “United States,” illegally overthrew the government of the Hawaiian Kingdom on January 17, 1893, and claimed to have annexed the Hawaiian Islands in 1898. Much has occurred since, but an exhaustive legal analysis has been lacking, to say the least, that could serve to clarify and qualify matters that have significant and profound legal consequences within the Hawaiian Islands and abroad. At present, there are three levels of government here in the Islands: first, the Federal government of the United States; second, the State of Hawai‘i government; and, third, the County governments on the Islands of Hawai‘i, Maui, O‘ahu, and Kaua‘i. The claim of sovereignty by the United States over the Hawaiian Islands underpins the authority of these governments. If this claim were answered in the negative, it would consequently render these governments in the Hawaiian Islands “self-declared” and their authority “unfounded.” Furthermore, where then would the sovereignty lie, and is there a government that can be regarded legitimate. The answer to this question does not lie within the purview of politics, but rather on the objective principles and rules of international law together with actions taken by the *acting* government of the Hawaiian Kingdom that gradually developed, through time, into a customary right of legitimacy.
- 1.2. In order to address these matters, this Brief will answer two underlying issues:
 - A. Whether the Hawaiian Kingdom continues to exist an independent State and a subject of International Law, which also addresses the United States’ claim of sovereignty over the Hawaiian Islands?
 - B. Whether the present *acting* government may be regarded as the legitimate government of the Hawaiian Kingdom with a customary right to represent the Hawaiian State?
- 1.3. Since the *acting* government’s claim to be the legitimate governmental authority in the Hawaiian Islands, it follows that the continuity of the

* The author of this Brief has a Ph.D. in political science from the University of Hawai‘i at Manoa, specializing in international relations and public law. He currently serves as the Ambassador-at-large for the *acting* government of the Hawaiian Kingdom.

Hawaiian Kingdom as an independent State and subject of international law is *condicio sine qua non*. Furthermore, while continuity underpins the *acting* government's claim to act as the legitimate authority, it does not automatically confer international recognition under international law. It is therefore necessary to examine first the question of Hawaiian State continuity, which will include the United States of America's claim as a successor State, then followed by an examination of governmental authority displayed by the *acting* government as the legitimate authority.

A. THE CONTINUITY OF THE HAWAIIAN KINGDOM

2. *GENERAL CONSIDERATIONS*

- 2.1. The issue of State continuity usually arises in cases in which some element of the State has undergone some significant transformation, such as changes in its territory or in its form of government. A claim as to State continuity is essentially a claim as to the continued independent existence of a State for purposes of international law in spite of such changes. It is predicated, in that regard, upon an insistence that the State's legal identity has remained intact. If the State concerned retains its identity it can be considered to "continue" and *vice versa*. Discontinuity, by contrast, supposes that the identity of the State has been lost or fundamentally altered in such a way that it has ceased to exist as an independent State and, as a consequence, rights of sovereignty in relation to territory and population have been assumed by another "successor" State to the extent provided by the rules of succession. At its heart, therefore, the issue of State continuity is concerned with the parameters of a State's existence and demise, or extinction, in international law.
- 2.2. The claim of State continuity on the part of the Hawaiian Kingdom has to be opposed as against a claim by the United States as to its succession. It is apparent, however, that this opposition is not a strict one. Principles of succession may operate even in cases where continuity is not called into question, such as with the cession of a portion of territory from one State to another, or occasionally in case of unification. Continuity and succession are, in other words, not always mutually exclusive but might operate in tandem. It is evident, furthermore, that the principles of continuity and succession may not actually differ a great deal in terms of their effect.
- 2.3. Even if it is relatively clear as to when States may be said to come into being for purposes of international law, the converse is far from being the case. Beyond the theoretical circumstance in which a body politic has dissolved, *e.g.* by submergence of the territory or the dispersal of the population, it is apparent that all cases of putative extinction will arise in cases where certain changes of a material nature have occurred—such as a change in government and change in the territorial configuration of the State. The difficulty, however, is in determining when such changes are merely incidental, leaving

intact the identity of the State, and when they are to be regarded as fundamental going to the heart of that identity. It is evident, moreover, that States are complex political communities possessing various attributes of an abstract nature which vary in space as well as time, and, as such, determining the point at which changes in those attributes are such as to affect the State's identity will inevitably call for very fine distinctions.

- 2.4. It is generally held, nevertheless, that there exist several uncontroversial principles that have some bearing upon the issue of continuity. These are essentially threefold, all of which assume an essentially negative form. First, that the continuity of the State is not affected by changes in government even if of a revolutionary nature. Secondly, that continuity is not affected by territorial acquisition or loss, and finally that it is not affected by military occupation. Crawford points out that,

“There is a strong presumption that the State continues to exist, with its rights and obligations, despite revolutionary changes in government, or despite a period in which there is no, or no effective, government. Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State.”¹

- 2.5. Each of these principles reflects upon one of the key incidents of statehood—territory, government (legal order) and independence—making clear that the issue of continuity is essentially one concerned with the existence of States: unless one or more of the key constituents of Statehood are entirely and permanently lost, State identity will be retained. Their negative formulation, furthermore, implies that there exists a general presumption of continuity. As Hall was to express the point, a State retains its identity

“so long as the corporate person undergoes no change which essentially modifies it from the point of view of its international relations, and with reference to them it is evident that no change is essential which leaves untouched the capacity of the state to give effect to its general legal obligations or to carry out its special contracts.”²

The only exception to this general principle is to be found in case of multiple changes of a less than total nature, such as where a revolutionary change in government is accompanied by a broad change in the territorial delimitation of the State.³

¹ JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 34 (2nd ed., 2006).

² WILLIAM EDWARD HALL, *A TREATISE ON INTERNATIONAL LAW* 22 (4th ed. 1895).

³ *See generally*, KRYSZYNA MAREK, *IDENTITY AND CONTINUITY OF STATES IN PUBLIC INTERNATIONAL LAW* (2nd ed. 1968).

- 2.6. If one were to speak about a presumption of continuity, one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains. It might be objected that formally speaking, the survival or otherwise of a State should be regarded as independent of the legitimacy of any claims to its territory on the part of other States. It is commonly recognized that a State does not cease to be such merely in virtue of the existence of legitimate claims over part or parts of its territory. Nevertheless, where those claims comprise the entirety of the territory of the State, as they do in case of Hawai'i, and when they are accompanied by effective governance to the exclusion of the claimant, it is difficult, if not impossible, to separate the two questions. The survival of the Hawaiian Kingdom is, it seems, premised upon the "legal" basis of present or past United States claims to sovereignty over the Islands.
- 2.7. In light of such considerations, any claim to State continuity will be dependent upon the establishment of two legal facts: *first*, that the State in question existed as a recognized entity for purposes of international law at some relevant point in history; and, *secondly*, that intervening events have not been such as to deprive it of that status. It should be made very clear, however, that the issue is not simply one of "observable" or "tangible facts," but more specifically of "legally relevant facts." It is not a case, in other words, simply of observing how power or control has been exercised in relation to persons or territory, but of determining the scope of "authority," which is understood as "a legal entitlement to exercise power and control." Authority differs from mere control by not only being essentially rule governed, but also in virtue of the fact that it is not always entirely dependent upon the exercise of that control. As Arbitrator Huber noted in the *Island of Palmas Case*:

"Manifestations of sovereignty assume... different forms according to conditions of time and place. Although continuous in principle, sovereignty cannot be exercised in fact at every moment on every point of a territory. The intermittence and discontinuity compatible with the maintenance of the right necessarily differ according as inhabited or uninhabited regions are involved, or regions enclosed within territories in which sovereignty is incontestably displayed or again regions accessible from, for instance, the high seas."⁴

Thus, while "the continuous and peaceful display of territorial sovereignty" remains an important measure for determining entitlements in cases where title is disputed, or where "no conventional line of sufficient topographical precision exists," it is not always an indispensable prerequisite for legal title. This has become all the more apparent since the prohibition on the annexation

⁴ *Island of Palmas Case (Netherlands v. United States)* 2 R.I.A.A. 829.

of territory became firmly implanted in international law, and with it the acceptance that certain factual situations will not be accorded legal recognition, *ex inuria ius non oritur*.

3. THE STATUS OF THE HAWAIIAN KINGDOM AS A SUBJECT OF INTERNATIONAL LAW

- 3.1. When the United Kingdom and France formally recognized the Hawaiian Kingdom as an “independent state” at the Court of London on November 28, 1843,⁵ and later formally recognized by the United States of America on July 6, 1844 by letter to the Hawaiian government from Secretary of State John C. Calhoun,⁶ the Hawaiian State was admitted into the Family of Nations. Since its recognition, the Hawaiian Kingdom entered into extensive treaty relations with a variety of States establishing diplomatic relations and trade agreements.⁷ To quote the *dictum* of the Permanent Court of Arbitration in 2001:

“A perusal of the material discloses that 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, including by exchanges of diplomatic or consular representatives and the conclusion of treaties.”⁸

Additionally, the Hawaiian Kingdom became a full member of the Universal Postal Union on January 1, 1882.

- 3.2. As an independent State, the Hawaiian Kingdom, along with other independent States within the Family of Nations, obtained “international personality” and, as such, all independent States “are regarded equal, and the rights of each not deemed to be dependent upon the possession of power to insure their enforcement.”⁹ According to Dickinson, the

“principle of equality has an important legal significance in the modern law of nations. It is the expression of two important legal

⁵ The Joint Declaration can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%202.pdf>.

⁶ The Letter can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%203.pdf>.

⁷ The Hawaiian Kingdom entered into treaties with Austria-Hungary, June 18, 1875; Belgium, October 4, 1862; Bremen (succeeded by Germany), March 27, 1854; Denmark, October 19, 1846; France, September 8, 1858; French Tahiti, November 24, 1853; Germany, March 25, 1879; New South Wales (now Australia), March 10, 1874; Hamburg (succeeded by Germany), January 8, 1848); Italy, July 22, 1863; Japan, August 19, 1871, January 28, 1886; Netherlands, October 16, 1862; Portugal, May 5, 1882; Russia, June 19, 1869; Samoa, March 20, 1887; Spain, October 9, 1863; Sweden-Norway (now separate States), April 5, 1855; and Switzerland, July 20, 1864; the United Kingdom of Great Britain and Northern Ireland) March 26, 1846; and the United States of America, December 20, 1849, January 13, 1875, September 11, 1883, December 6, 1884. These treaties can be accessed online at: http://hawaiiankingdom.org/UN_Protest_Annexes.shtml.

⁸ *Larsen v. Hawaiian Kingdom*, 119 INT’L L. REP. 566, 581 (2001), reprinted in 1 HAW. J. L. & POL. 299 (Summer 2004).

⁹ CHARLES CHENEY HYDE, INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 20 (Vol. I, 1922).

principles. The first of these may be called the equal protection of the law or equality before the law. ...The second principle is usually described as equality of rights and obligations or more often as equality of rights.”¹⁰

International personality is defined as “the capacity to be bearer of rights and duties under international law.”¹¹ Crawford, however, distinguishes between “general” and “special” legal personality. The former “arises against the world (*erga omnes*),” and the latter “binds only consenting States.”¹² As an independent State, the Hawaiian Kingdom, like the United States of America, has both “general” legal personality under international law as well as “special” legal personality under the 1893 executive agreements that bind both the Hawaiian Kingdom and the United States to certain duties and obligations as hereinafter described.

- 3.3. The consequences of statehood at that time were several. States were deemed to be sovereign not only in a descriptive sense, but were also regarded as being “entitled” to sovereignty. This entailed, among other things, the rights to free choice of government, territorial inviolability, self-preservation, free development of natural resources, of acquisition and of absolute jurisdiction over all persons and things within the territory of the State.¹³ It was, however, admitted that intervention by another State was permissible in certain prescribed circumstances such as for purposes of self-preservation, for purposes of fulfilling legal engagements, or of opposing wrongdoing. Although intervention was not absolutely prohibited in this regard, it was generally confined as regards the specified justifications. As Hall remarked, “The legality of an intervention must depend on the power of the intervening state to show that its action is sanctioned by some principle which can, and in the particular case does, take precedence of it.”¹⁴ A desire for simple aggrandizement of territory did not fall within these terms, and intervention for purposes of supporting one party in a civil war was often regarded as unlawful.¹⁵ In any case, the right of independence was regarded as so fundamental that any action against it “must be looked upon with disfavor.”¹⁶
- 3.4. “Governmental authority,” states Crawford, “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.”¹⁷ On January 17, 1893, Queen Lili‘uokalani, who was constitutionally vested with the

¹⁰ EDWIN DEWITT DICKINSON, *THE EQUALITY OF STATES IN INTERNATIONAL LAW* 335 (1920).

¹¹ SCHWARZENBERGER, *A MANUAL OF INTERNATIONAL LAW* 53 (6th ed., 1976).

¹² See CRAWFORD, *supra* note 1, at 30.

¹³ ROBERT PHILLIMORE, *COMMENTARIES UPON INTERNATIONAL LAW*, VOL. I, 216 (1879).

¹⁴ See HALL, *supra* note 2, at 298.

¹⁵ THOMAS LAWRENCE, *PRINCIPLES OF INTERNATIONAL LAW* 134 (4th ed. 1913).

¹⁶ See HALL, *supra* note 2, at 298.

¹⁷ See CRAWFORD, *supra* note 1, at 56.

“executive power” under Article 31 of the Hawaiian constitution,¹⁸ was unable to apprehend certain insurgents calling themselves the provisional government without armed conflict between United States troops, who were illegally landed by the United States Legation to protect the insurgents, 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 under threat of war calling for an investigation of its diplomat and military commanders who have intervened in the internal affairs of the Hawaiian Kingdom, and, thereafter, restore the government.¹⁹ Upon receipt of the Queen’s diplomatic protest, United States President Cleveland initiated an investigation by first withdrawing a treaty, which provided for the cession of Hawaiian territory, from the United States Senate, and appointed a Special Commissioner, James Blount, to travel to the Hawaiian Islands in order to provide reports to the United States Secretary of State Walter Gresham. Blount reported that, “in pursuance of a prearranged plan [between the insurgents, claiming to be a government, and the U.S. Legation], the Government thus established hastened off commissioners to Washington to make a treaty for the purpose of annexing the Hawaiian Islands to the United States.”²⁰

- 3.5. The investigation concluded that the United States Legation accredited to the Hawaiian Kingdom, together with United States Marines and Naval personnel, were directly responsible for the illegal overthrow of the Hawaiian government with the ultimate goal of transferring the Hawaiian Islands to the United States from an installed puppet government.²¹ The President acknowledged that the

“military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawai‘i or for the *bona fide* purpose of protecting the imperiled lives and property of citizens of the United States. But there is no pretense

¹⁸ Hawaiian constitution, art. 31, provides: “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” The constitution can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%204.pdf>.

¹⁹ The diplomatic protest stated, “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 authority which I claim as the constitutional sovereign of the Hawaiian Islands.”

²⁰ United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai‘i: 1894-95, (Government Printing Office 1895), 587, [hereafter Executive Documents]. Reprinted at 1 HAW. J. L. & POL. 136 (Summer 2004).

²¹ *Id.* at 567.

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.”²²

“When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in a manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*.”²³

The investigation also detailed the culpability of the United States government in violating international laws, as well as Hawaiian State territorial sovereignty and concluded it must provide *restitutio in integrum*—restoration to the original situation before the United States intervention occurred on January 16, 1893.

- 3.6. Through negotiations and *exchange of notes* between the Queen and the new United States Minister Plenipotentiary Albert Willis, assigned to the Hawaiian Islands, settlement for the illegal overthrow of the Hawaiian government was achieved by executive agreement. On the part of the United States, the President committed to restore the government as it stood before the landing of United States troops on January 16, 1893, and, thereafter, on the part of the Hawaiian Kingdom, the Queen committed to grant amnesty to the insurgents and assume all obligations of the self-proclaimed provisional government. Myers explains, “*Exchange of notes* is the most flexible form of a treaty... The exchange consists of an offer and an acceptance... The offering instrument contains a text of the proposed agreement and the acceptance invariably repeats it verbatim, with assent.”²⁴ According to Garner,

“Agreements in the form of an *exchange of notes* between certain high officials acting on behalf of States, usually their Ministers of Foreign Affairs or diplomatic representatives are numerous... They are employed for a variety of purposes and, like instruments which are designated as ‘treaties’, they may deal with any matter which is a proper subject of international regulation. One of their most common objects is to record the understandings of the parties to a treaty which they have previously entered into; but they may record an entirely new agreement, sometimes one which has been reached as a result of negotiation. While the purpose of an agreement effected by any *exchange of notes* may not differ from that of instruments designated by other names, it is strikingly different in its form from a ‘treaty’ or a ‘convention.’ Unlike a treaty, the relations which it establishes or seeks to establish is recorded, not in a single highly formalized instrument, but in two or more letters usually called ‘notes,’ signed by Ministers or other officials.”²⁵

²² *Id.*, at 451.

²³ *Id.*, at 453.

²⁴ Denys P. Myers, *The Names and Scope of Treaties*, 51 AM. J. INT’L L. 590 (1957).

²⁵ 29 AM. J. INT’L L., Supplement, 698 (1935).

The first executive agreement, by *exchange of notes*, was the temporary and conditional assignment of executive power (police power) from the Queen to the President on January 17, 1893, and the acceptance of the assignment by the President on March 9, 1893 when he initiated the investigation. The second executive agreement, by *exchange of notes*, was the President's "offer" to restore the *de jure* government on condition that the Queen would commit to grant amnesty to the insurgents on November 13, 1893, and the "acceptance" by the Queen of this condition on December 18, 1893. The two executive agreements are referred to herein as the *Lili'uokalani assignment* and the *Agreement of restoration*, respectively.

- 3.7. By virtue of the *Lili'uokalani assignment*, executive power (police power) of the Hawaiian Kingdom is temporarily 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, or its successor, to grant amnesty. The failure of Congress to authorize the President to use force in carrying out these agreements did not diminish the validity of 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."²⁶
- 3.8. President Cleveland failed to follow through in his commitment to administer Hawaiian law and re-instate the *de jure* government as a result of partisan wrangling in the United States Congress. In a deliberate move to further isolate the Hawaiian Kingdom from any assistance by other States and treaty partners and to reinforce and protect the puppet regime installed by United States officials, the Senate and House of Representatives each passed similar resolutions in 1894 strongly warning other States "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."²⁷ Although the Hawaiian government was not restored and the country thrown into civil unrest as a result, the continuity of the Hawaiian State was nevertheless maintained.
- 3.9. Five years passed before Cleveland's presidential successor, William McKinley, entered into a second treaty of cession with the same individuals who participated in the illegal overthrow with the United States legation in 1893, and were now calling themselves the Republic of Hawai'i. This second treaty was signed on June 16, 1897 in Washington, D.C., but would "be taken up immediately upon the convening of Congress next December."²⁸

²⁶ QUINCY WRIGHT, *THE CONTROL OF FOREIGN RELATIONS*, 235 (1922).

²⁷ Senate Resolution, May 31, 1894, 53rd Congress, 2nd Session, vol. 26.

²⁸ "Hawaiian Treaty to Wait—Senator Morgan Suggests that It Be Taken Up at This Session Without Result." *The New York Times*, 3 (July 25, 1897).

- 3.10. Queen Lili'uokalani was in the United States at the time of the signing of the treaty and protested the second annexation attempt of the country. While in Washington, D.C., the Queen filed a diplomatic protest with the United States Department of State on June 17, 1897. The Queen stated, in part:

I, Lili'uokalani of Hawai'i, by the will of God named heir apparent on the tenth day of April, A.D. 1877, and by the grace of God Queen of the Hawaiian Islands on the seventeenth day of January, A.D. 1893, do hereby protest against the ratification of a certain treaty, which, so I am informed, has been signed at Washington by Messrs. Hatch, Thurston, and Kinney, purporting to cede those Islands to the territory and dominion of the United States. I declare such a treaty to be an act of wrong toward the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, in violation of international rights both toward my people and toward friendly nations with whom they have made treaties, the perpetuation of the fraud whereby the constitutional government was overthrown, and, finally, an act of gross injustice to me.²⁹

- 3.11. Hawaiian political organizations in the Islands filed additional protests with the Department of State in Washington, D.C. These organizations were the Men and Women's Hawaiian Patriotic League (Hui Aloha 'Aina), and the Hawaiian Political Association (Hui Kalai'aina).³⁰ In addition, a petition of 21,269 signatures of Hawaiian subjects and resident aliens protesting annexation was filed with the Senate when it convened in December 1897.³¹ As a result of these protests, the Senate was unable to garner enough votes to ratify the so-called treaty. Unable to procure a treaty of cession from the Hawaiian government acquiring the Hawaiian Islands as required by international law, Congress unilaterally enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War.³² The territorial limitation of Congressional laws are indisputable, and to quote from the United States Supreme Court:

“Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens..., and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law. As a member of the family of nations, the right and power of the United States in that field are equal to the right and power of the other members of the international family. Otherwise, the United States is not completely sovereign.”³³

²⁹ LILI'UOKALANI, HAWAI'I'S STORY BY HAWAI'I'S QUEEN, 354 (1964); Protest *reprinted in* 1 HAW. J. L. & POL. 227 (Summer 2004).

³⁰ These protests can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%2018.pdf>.

³¹ The signature petition can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%2019.pdf>.

³² 30 U.S. Stat. 750.

³³ *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

Many government officials and constitutional scholars were at a loss in explaining how a joint resolution could have extra-territorial force in annexing Hawai‘i, a foreign and sovereign State, because during the 19th century, as Born states, “American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction.”³⁴ During the debate in Congress, Representative Thomas H. Ball (D-Texas) characterized the annexation of the Hawaiian State by joint resolution as “a deliberate attempt to do unlawfully that which can not be lawfully done.”³⁵ The citizenry and residents of the Hawaiian Kingdom also understood the illegality of the joint resolution. On October 20, 1900, the following editorial was published in the Maui News newspaper making reference to statements made by Thomas Clark who was formerly British, but acquired Hawaiian citizenship through naturalization in 1867. Clark was also a signatory to the 21,269 signature petition against the treaty of annexation that was before the United States Senate.

Thomas Clark, a candidate for Territorial senator from Maui, holds that it was an unconstitutional proceeding on the part of the United States to annex the Islands without a treaty, and that as a matter of fact, the Island[s] are not annexed, and cannot be, and that if the democrats come in to power they will show the thing up in its true light and demonstrate that...the Islands are de facto independent at the present time.³⁶

- 3.12. The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War, and the occupation was justified as a military necessity in order to reinforce and supply the troops that have been occupying the Spanish colonies of Guam and the Philippines since 1 May 1898. The justification as a war measure was clearly displayed in a secret session of the United States Senate on May 31, 1898.³⁷ Following the close of the Spanish-American War by the Treaty of Paris,³⁸ United States troops remained in the Hawaiian Islands and continued its occupation to date in violation of international law and the 1893 *Lili‘uokalani assignment* and the *Agreement of restoration*. The United States Supreme Court has also confirmed that military occupation, which is deemed provisional, does not transfer sovereignty of the occupied State to the occupant State even when the *de jure* sovereign is deprived of power to exercise its right within the occupied territory.³⁹ Hyde states, in “consequence of belligerent occupation, the

³⁴ GARY BORN, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS 493 (3rd ed. 1996).

³⁵ 31 CONG. REC. 5975 (1898).

³⁶ The Maui News article can be accessed online at: <http://hawaiiankingdom.org/blog/?p=189>.

³⁷ 1 HAW. J. L. & POL. 230 (Summer 2004).

³⁸ 30 U.S. Stat. 1754.

³⁹ *Thirty Hogsheads of Sugar v. Boyle*, 13 U.S. 191 (1815); *United States v. Rice*, 17 U.S. 246 (1819); *Flemming v. Page*, 50 U.S. 603 (1850); see also United States Army Field Manual 27-10, *Section 358—Occupation Does Not Transfer Sovereignty*. Being an incident of war, military occupation confers upon the invading force the means of exercising control for

inhabitants of the district find themselves subjected to a new and peculiar relationship to an alien ruler to whom obedience is due.”⁴⁰ In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai‘i*,⁴¹ and shortly thereafter, intentionally sought to “Americanize” the inhabitants of the Hawaiian Kingdom politically, culturally, socially, and economically. To accomplish this, a plan was instituted in 1906 by the Territorial government, titled “Programme for Patriotic Exercises in the Public Schools, Adopted by the Department of Public Instruction,”⁴² to denationalize the children of the Hawaiian Islands through the public schools on a massive scale. *Harper’s Weekly* reported:

“At the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which surrounds the building. ...Out upon the lawn marched the children, two by two, just as precise and orderly as you find them at home. With the ease that comes of long practice the classes marched and counter-marched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet about their heads. ...‘Attention!’ Mrs. Fraser commanded. The little regiment stood fast, arms at side, shoulders back, chests out, heads up, and every eye fixed upon the red, white and blue emblem that waived protectingly over them. ‘Salute!’ was the principal’s next command. Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice: ‘We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!’⁴³

The purpose of the plan was to obliterate any memory of the national character of the Hawaiian Kingdom the children may have and replace it, through indoctrination, with American patriotism. “Usurpation of sovereignty during military occupation” and “attempts to denationalize the inhabitants of occupied territory” was recognized as international crimes since 1919.⁴⁴ In the

the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force. It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress.

⁴⁰ CHARLES CHENEY HYDE, *INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES* 363 (Vol. II, 1922).

⁴¹ 31 U.S. Stat. 141.

⁴² The Programme can be accessed from the United States Archives online at:

<http://ia700604.us.archive.org/17/items/programmeforpatr00hawa/programmeforpatr00hawa.pdf>.

⁴³ WILLIAM INGLIS, *Hawai‘i’s Lesson to Headstrong California: How the Island Territory has solved the problem of dealing with its four thousand Japanese Public School children*, *HARPER’S WEEKLY* 227 (Feb. 16, 1907).

⁴⁴ See Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, *Report Presented to the Preliminary Peace Conference, March 29, 1919*, 14 Am. J. Int’l L. 95, at (1920).

Nuremburg trials, these two crimes were collectively known as Germanization. Under the heading “Germanization of Occupied Territories,” Count III(j) of the Nuremburg Indictment, it provides:

“In certain occupied territories purportedly annexed to Germany the defendants methodically and pursuant to plan endeavored to assimilate those territories politically, culturally, socially, and economically into the German Reich. The defendants endeavored to obliterate the former national character of these territories. In pursuance of these plans and endeavors, the defendants forcibly deported inhabitants who were predominantly non-German and introduced thousands of German colonists. This plan included economic domination, physical conquest, installation of puppet governments, purported *de jure* annexation and enforced conscription into the German Armed Forces. This was carried out in most of the occupied countries including: Norway, France...Luxembourg, the Soviet Union, Denmark, Belgium, and Holland.”⁴⁵

Further usurping Hawaiian sovereignty, President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai‘i into the Union*, hereinafter “Statehood Act.”⁴⁶ These laws, which have no extraterritorial effect, stand in direct violation of the *Lili‘uokalani assignment and Agreement restoration*, being international compacts, the 1907 Hague Convention, IV, and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV.

- 3.13. In 1946, prior to the passage of the Statehood Act, the United States further misrepresented its relationship with Hawai‘i when its permanent representative to the United Nations identified Hawai‘i as a non-self-governing territory under the administration of the United States since 1898. In accordance with Article 73(e) of the U.N. Charter, the United States permanent representative erroneously reported Hawai‘i as a non-self-governing territory that was acknowledged in a resolution by United Nations General Assembly.⁴⁷ On June 4, 1952, the Secretary General of the United Nations reported information submitted to him by the permanent representative of the United States regarding American Samoa, Hawai‘i, Puerto Rico and the Virgin Islands.⁴⁸ In this report, the United States made no mention that the Hawaiian Islands were an independent State since 1843 and that its government was illegally overthrown by U.S. forces, which was later

⁴⁵ See Trial of the Major War Criminals before the International Military Tribunal, *Indictment*, vol. 1, at 27, 63 (Nuremberg, Germany, 1947).

⁴⁶ 73 U.S. Stat. 4.

⁴⁷ *Transmission of Information under Article 73e of the Charter*, December 14, 1946, United Nations General Assembly Resolution 66(I).

⁴⁸ *Information from Non-self-governing Territories: Summary and Analysis of Information Transmitted Under Article 73 e of the Charter. Report of the Secretary General: Summary of Information transmitted by the Government of the United States of America*, 4 June 1952, United Nations, Document A/2135.

settled by an executive agreement through *exchange of notes*. The representative also fails to disclose diplomatic protests that succeeded in preventing the second attempt to annex the Islands by a treaty of cession in 1897. Instead, the representative provides a picture of Hawai‘i as a non-State nation, by stating:

“The Hawaiian Islands were discovered by James Cook in 1778. At that time divided into several petty chieftainships, they were soon afterwards united into one kingdom. The Islands became an important port and recruiting point for the early fur and sandalwood traders in the North Pacific, and the principal field base for the extensive whaling trade. When whaling declined after 1860, sugar became the foundation of the economy, and was stimulated by a reciprocity treaty with the United States (1896).

American missionaries went to Hawaii in 1820; they reduced the Hawaiian language to written form, established a school system, and gained great influence among the ruling chiefs. In contact with foreigners and western culture, the aboriginal population steadily declined. To replace this loss and to furnish labourers for the expanding sugar plantations, large-scale immigration was established.

When later Hawaiian monarchs showed a tendency to revert to absolutism, political discords and economic stresses produced a revolutionary movement headed by men of foreign birth and ancestry. The Native monarch was overthrown in 1893, and a republic government established. Annexation to the United States was one aim of the revolutionists. After a delay of five years, annexation was accomplished.

...The Hawaiian Islands, by virtue of the Joint Resolution of Annexation and the Hawaiian Organic Act, became an integral part of the United States and were given a territorial form of government which, in the United States political system, precedes statehood.”⁴⁹

- 3.14. In 1959, the Secretary General received a communication from the United States permanent representative that they will no longer transmit information regarding Hawai‘i because it supposedly “became one of the United States under a new constitution taking effect on [August 21, 1959].”⁵⁰ This resulted in a General Assembly resolution stating it “Considers it appropriate that the transmission of information in respect of Alaska and Hawaii under Article 73e of the Charter should cease.”⁵¹ Evidence that the United Nations was not

⁴⁹ *Id.*, at 16-17.

⁵⁰ *Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America*, United Nations, Document no. A/4226, at 99.

⁵¹ *Cessation of the transmission of information under Article 73 e of the Charter in respect of Alaska and Hawaii*, December 12, 1959, United Nations General Assembly Resolution 1469 (XIV).

aware of Hawaiian independence since 1843 can be gleaned from the following statement by the United Nations.

“Though the General Assembly considered that the manner in which Territories could become fully self-governing was primarily through the attainment of independence, it was observed in the Fourth Committee that the General Assembly had recognized in resolution 748 (VIII) that self-government could also be achieved by association with another State or group of States if the association was freely chosen and was on a basis of absolute equality. There was unanimous agreement that Alaska and Hawaii had attained a full measure of self-government and equal to that enjoyed by all other self-governing constituent states of the United States. Moreover, the people of Alaska and Hawaii had fully exercised their right to choose their own form of government.”⁵²

Although the United Nations passed two resolutions acknowledging Hawai‘i to be a non-self-governing territory that has been under the administration of the United States of America since 1898 and was granted self-governance in 1959, it did not affect the continuity of the Hawaiian State because, foremost, United Nations resolutions are not binding on member States of the United Nations,⁵³ let alone a non-member State—the Hawaiian Kingdom. Crawford explains, “Of course, the General Assembly is not a legislature. Mostly its resolutions are only recommendations, and it has no capacity to impose new legal obligations on States.”⁵⁴ Secondly, the information provided to the General Assembly by the United States was distorted and flawed. In *East Timor*, Portugal argued that resolutions of both the General Assembly and the Security Council acknowledged the status of East Timor as a non-self-governing territory and Portugal as the administering power and should be treated as “givens.”⁵⁵ The International Criminal Court, however, did not agree and found

“that it cannot be inferred from the sole fact that the above-mentioned resolutions of the General Assembly and the Security Council refer to Portugal as the administering Power of East Timor that they intended to establish an obligation on third States.”⁵⁶

Even more problematic is when the decisions embodied in the resolutions as “givens” are wrong. Acknowledging this possibility, Bowett states, “where a decision affects a State’s legal rights or responsibilities, and can be shown to be unsupported by the facts, or based upon a quite erroneous view of the facts,

⁵² *Repertory of Practice of United Nations Organs, Extracts relating to Article 73 of the Charter of the United Nations*, Supplement No. 1 (1955-1959), volume 3, at 200, para. 101.

⁵³ IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 14 (4th ed. 1990).

⁵⁴ See CRAWFORD, *supra* note 1, at 113.

⁵⁵ In *East Timor* (Portugal v. Australia) [1995] ICJ Rep. 90, at 103, para. 30.

⁵⁶ *Id.*, at 104, para. 32.

or a clear error of law, the decision ought in principle to be set aside.”⁵⁷ Öberg also concurs and acknowledges that resolutions “may have been made on the basis of partial information, where not all interested parties were heard, and/or too urgently for the facts to be objectively established.”⁵⁸ As an example, Öberg cited Security Council Resolution 1530, March 11, 2004, that “misidentified the perpetrator of the bomb attacks carried out in Madrid, Spain, on the same day.”⁵⁹

4. RECOGNIZED MODES OF EXTINCTION

- 4.1. In light of the evident existence of Hawai’i as a sovereign State for some period of time prior to 1898, it would seem that the issue of continuity turns upon the question whether Hawai’i can be said to have subsequently ceased to exist according to the terms of international law. Current international law recognizes that a State may cease to exist in one of two scenarios: *first*, by means of that State’s integration with another State in some form of union; or, *second*, by its dismemberment, such as in the case of the Socialist Federal Republic of Yugoslavia or Czechoslovakia. As will be seen, events in Hawai’i in 1898 are capable of being construed in several ways, but it is evident that the most obvious characterization was one of cession by joint resolution of the Congress.
- 4.2. Turning then to the law as it existed at the critical date of 1898, it was generally held that a State might cease to exist in one of three scenarios:
 - (a) By the destruction of its territory or by the extinction, dispersal or emigration of its population, which is a theoretical disposition.
 - (b) By the dissolution of the corpus of the State.⁶⁰
 - (c) By the State’s incorporation, union, or submission to another.⁶¹
- 4.3. Neither (a) nor (b) is applicable in the current scenario. In case of (c) commentators have often distinguished between two processes—one of which involved a voluntary act, *i.e.* union or incorporation, the other of which came about by non-consensual means, *i.e.* conquest and submission followed by

⁵⁷ Derek Bowett, *The Impact of Security Council Decisions on Dispute Settlement Procedures*, 5 Eur. J. Int’l L. 89, 97 (1994).

⁵⁸ Marko Divac Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, 16(5) EUR. J. INT’L L. 879, 892 (2005).

⁵⁹ *Id.*, at n. 82.

⁶⁰ Cases include the dissolution of the German Empire in 1805-6; the partition of the Pays-Bas in 1831 or of the Canton of Bale in 1833

⁶¹ Cases include the incorporation of Cracow into Austria in 1846; the annexation of Nice and Savoy by France in 1860; the annexation of Hannover, Hesse, Nassau and Schleswig-Holstein and Frankfurt into Prussia in 1886.

annexation.⁶² It is evident that annexation or “conquest” was regarded as a legitimate mode of acquiring title to territory,⁶³ and it would seem to follow that in case of total annexation—annexation of the entirety of the territory of a State, the defeated State would cease to exist.

- 4.4. Although annexation was regarded as a legitimate means of acquiring territory, it was recognized as taking a variety of forms.⁶⁴ It was apparent that a distinction was typically drawn between those cases in which, the annexation was implemented by a Treaty of Peace, and those which resulted from an essentially unilateral public declaration on the part of the annexing power after the defeat of the opposing State, which the former was at war with. The former would be governed by the particular terms of the treaty in question, and gave rise to a distinct type of title.⁶⁵ Since treaties were regarded as binding irrespective of the circumstances surrounding their conclusion and irrespective of the presence or absence of coercion,⁶⁶ title acquired in virtue of a peace treaty was considered to be essentially derivative, *i.e.* being transferred from one State to another. There was little, in other words, to distinguish title acquired by means of a treaty of peace backed by force, and a voluntary purchase of territory: in each case the extent of rights enjoyed by the successor were determined by the agreement itself. In case of conquest absent an agreed settlement, by contrast, title was thought to derive simply from the fact of military subjugation and was complete “from the time [the conqueror] proves his ability to maintain his sovereignty over his conquest, and manifests, by some authoritative act... his intention to retain it as part of his own territory.”⁶⁷ What was required, in other words, was that the conflict be complete—acquisition of sovereignty *durante bello* being clearly excluded, and that the conqueror declare an intention to annex.⁶⁸
- 4.5. What remained a matter of some dispute, however, was whether annexation by way of subjugation should be regarded as an original or derivative title to territory and, as such, whether it gave rise to rights in virtue of mere occupation, or rather more extensive rights in virtue of succession—a point of particular importance for possessions held in foreign territory.⁶⁹ Rivier, for example, took the view that conquest involved a three stage process: a) the

⁶² See J. Westlake, *The Nature and Extent of the Title by Conquest*, 17 L. Q. REV. 392 (1901).

⁶³ LASSA OPPENHEIM, *INTERNATIONAL LAW*, VOL. I, 288 (9th ed. 1996), Oppenheim remarks that “[a]s long as a Law of Nations has been in existence, the states as well as the vast majority of writers have recognized subjugation as a mode of acquiring territory.”

⁶⁴ HENRY HALLECK, *INTERNATIONAL LAW*, 811 (1861); HENRY WHEATON, *ELEMENTS OF INTERNATIONAL LAW* II, c. iv, s. 165. (8th ed. 1866).

⁶⁵ See LAWRENCE, *supra* note 14, at 165-6 (“Title by conquest arises only when no formal international document transfers the territory to its new possessor.”)

⁶⁶ Vienna Convention on the Law of Treaties, art. 52 (1969).

⁶⁷ HENRY HALLECK, *INTERNATIONAL LAW*, 468 (3rd ed. 1893).

⁶⁸ This point was of considerable importance following the Allied occupation of Germany in 1945.

⁶⁹ For an early version of this idea see EMERICH DE VATTEL, *THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW*, BK. III, SEC. 193-201 (1758, trans. C. Fenwick, 1916). C. BYNKERSHOEK, *QUAESTIONUM JURIS PUBLICI LIBRI DUO*, BK. I, 32-46 (1737, trans. Frank T., 1930).

extinction of the State in virtue of *debellatio* which b) rendered the territory *terra nullius* leading to c) the acquisition of title by means of occupation.⁷⁰ Title, in other words, was original, and rights of the occupants were limited to those, which they possessed perhaps under the doctrine *uti possidetis de facto*. Others, by contrast, seemed to assume some form of “transfer of title” as taking place, *i.e.* that conquest gave rise to a derivative title,⁷¹ and concluded in consequence that the conqueror “becomes, as it were, the heir or universal successor of the defunct or extinguished State.”⁷² Much depended, in such circumstances, as to how the successor came to acquire title.

- 4.6. It should be pointed out, however, that even if annexation/conquest was generally regarded as a mode of acquiring territory, United States policy during this period was far more skeptical of such practice. As early as 1823 the United States had explicitly opposed, in the form of the Monroe Doctrine, the practice of European colonization⁷³ and in the First Pan-American Conference of 1889 and 1890 it had proposed a resolution to the effect that “the principle of conquest shall not...be recognized as admissible under American public law.”⁷⁴ It had, furthermore, later taken the lead in adopting a policy of non-recognition of “any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928”⁷⁵ which was confirmed as a legal obligation in a resolution of the Assembly of the League of Nations in 1932. Even if such a policy was not to amount to a legally binding commitment on the part of the United States not to acquire territory by use or threat of force during the latter stages of the 19th century, there is the doctrine of estoppel that would operate to prevent the United States subsequently relying upon forcible annexation as a basis for claiming title to the Hawaiian Islands. Furthermore, annexation by conquest would not apply to the case at hand because the Hawaiian Kingdom was never at war with the United States thereby preventing *debellatio* from arising as a mode of acquisition.

5. THE FUNCTION OF ESTOPPEL

- 5.1. The principle that a State cannot benefit from its own wrongful act is a general principle of international law referred to as estoppel.⁷⁶ The rationale for this rule derives from the *maxim pacta sunt servanda*—every treaty in force is

⁷⁰ RIVIER, *PRINCIPES DU DROIT DES GENS*, VOL. I, 182 (1896).

⁷¹ See PHILLIMORE, *supra* note 13, I, at 328.

⁷² See HALLECK, *supra* note 67, at 495.

⁷³ “The American continents, by the free and independent conditions which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European Powers.” James Monroe, Message to Congress, December 2, 1823.

⁷⁴ JOHN BASSET MOORE, *A DIGEST OF INTERNATIONAL LAW*, VOL. 1, 292 (1906).

⁷⁵ J.W. WHEELER-BENNETT (ED.), *DOCUMENTS ON INTERNATIONAL AFFAIRS* 1932 23 (1933). See also David Turns, *The Stimson Doctrine of Non-Recognition: Its Historical Genesis and Influence on Contemporary International Law*, 2 *CHINESE J. INT’L L.* 105-143 (2003).

⁷⁶ WILLIAM EDWARD HALL, *A TREATISE ON INTERNATIONAL LAW* 383 (8th ed. 1924).

binding upon the parties and must be performed by them in good faith,⁷⁷ and “operates so as to preclude a party from denying the truth of a statement of fact made previously by that party to another whereby that other has acted to his detriment.”⁷⁸ According to MacGibbon, underlying “most formulations of the doctrine of estoppel in international law is the requirement that a State ought to be consistent in its attitude to a given factual or legal situation.”⁷⁹ In municipal jurisdictions there are three forms of estoppel—estoppel by judgment as in matters of court decisions; estoppel by deed as in matters of written agreement or contract; and estoppel by conduct as in matters of statements and actions. Bowett states that these forms of estoppel, whether treated as a rule of evidence or as substantive law, is as much part of international law as they are in municipal law, and due to the diplomatic nature of States relations, he expands the second form of estoppel to include estoppel by “Treaty, Compromise, Exchange of Notes, or other Undertaking in Writing.”⁸⁰ Brownlie states that because estoppel in international law rests on principles of good faith and consistency, it is “shorn of the technical features to be found in municipal law.”⁸¹ Bowett enumerates the three essentials establishing estoppel in international law:

1. The statement of fact must be clear and unambiguous.
2. The statement of fact must be made voluntarily, unconditionally, and must be authorized.
3. There must be reliance in good faith upon the statement either to the detriment of the party so relying on the statement or to the advantage of the party making the statement.⁸²

To ensure consistency in State behavior, the Permanent Court of International Justice, in a number of cases, affirmed the principle “that a State cannot invoke its municipal law as a reason for failure to fulfill its international obligation.”⁸³ This principle was later codified under Article 27 of the 1969 Vienna Convention on the Law of Treaties, whereby “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”⁸⁴ It is self-evident that the 1893 *Lili‘uokalani assignment* and the *Agreement of restoration* meets the requirements of the first two essentials establishing estoppel, and, as for the third, reliance in good faith was clearly displayed and evidence in a memorial to President Cleveland by the Hawaiian Patriotic League on December 27, 1893. As stated in the memorial:

⁷⁷ See Vienna Convention, *supra* note 66, art. 26.

⁷⁸ D.W. Bowett, *Estoppel Before International Tribunals and its Relation to Acquiescence*, 33 BRIT. Y. B. INT’L L. 201 (1957).

⁷⁹ I.C. MacGibbon, *Estoppel in International Law*, 7 INT’L. & COMP. L. Q. 468 (1958).

⁸⁰ See Bowett, *supra* note 78, at 181.

⁸¹ See BROWNIE, *supra* note 53, at 641.

⁸² See Bowett, *supra* note 78, at 202.

⁸³ *Id.*, at 473.

⁸⁴ See Vienna Convention, *supra* note 66, art. 27.

“And while waiting for the result of [the investigation], with full confidence in the American honor, the Queen requested all her loyal subjects to remain absolutely quiet and passive, and to submit with patience to all the insults that have been since heaped upon both the Queen and the people by the usurping Government. The necessity of this attitude of absolute inactivity on the part of the Hawaiian people was further indorsed and emphasized by Commissioner Blount, so that, if the Hawaiians have held their peace in a manner that will vindicate their character as law-abiding citizens, yet it can not and must not be construed as evidence that they are apathetic or indifferent, or ready to acquiesce in the wrong and bow to the usurpers.”⁸⁵

- 5.2. Continued reliance was also displayed by the formal protests of the Queen and Hawaiian political organizations regarding the aforementioned second treaty of cession signed in Washington, D.C., on June 16, 1897. These protests were received and filed in the office of Secretary of State John Sherman and continue to remain a record of both dissent and evidence of reliance upon the conclusion of the investigation by President Cleveland and his obligation and commitment to *restitutio in integrum*—restoration of the *de jure* Hawaiian government. A memorial of the Hawaiian Patriotic League that was filed with the United States Hawaiian Commission for the creation of the territorial government appears to be the last “public” act of reliance made by a large majority of the Hawaiian citizenry.⁸⁶ The Commission was established on July 8, 1898 after President McKinley signed the joint resolution of annexation on July 7, 1898, and held meetings in Honolulu from August through September of 1898. The memorial, which was also printed in two Honolulu newspapers, one in the Hawaiian language⁸⁷ and the other in English,⁸⁸ stated, in part:

WHEREAS: By memorial the people of Hawaii have protested against the consummation of an invasion of their political rights, and have fervently appealed to the President, the Congress and the People of the United States, to refrain from further participation in the wrongful annexation of Hawaii; and

WHEREAS: The Declaration of American Independence expresses that Governments derive their just powers from the consent of the governed:

THEREFORE, BE IT RESOLVED: That the representatives of a large and influential body of native Hawaiians, we solemnly pray that the constitutional government of the 16th day of January, A.D. 1893, be restored, under the protection of the United States of America.

⁸⁵ See Executive Documents, *supra* note 20, at 1295, reprinted in 1 HAW. J. L. & POL. 217 (Summer 2004).

⁸⁶ Munroe Smith, Record of Political Events, 13(4) POL. SCI. Q. 745, 752 (Dec. 1898).

⁸⁷ *Memoriala A Ka Lahui* (Memorial of the Citizenry), KE ALOHA AINA, Sept. 17, 1898, at 3.

⁸⁸ *What Monarchists Want*, THE HAWAIIAN STAR, Sept. 15, 1898, at 3.

This memorial clearly speaks to the people’s understanding and reliance of the *Agreement of restoration* and the duties and obligations incurred by the United States even after the Islands were purportedly annexed.

5.3. There is no dispute between the United States and the Hawaiian Kingdom regarding the illegal overthrow of the *de jure* Hawaiian government, and the 1893 executive agreements—the *Lili‘uokalani assignment* and the *Agreement of restoration*, constitutes evidence of final settlement. As such, the United States cannot benefit from its deliberate non-performance of its obligation of administering Hawaiian law and restoring the *de jure* government under the 1893 executive agreements over the reliance held by the Hawaiian Kingdom and its citizenry in good faith and to their detriment. Therefore, the United States is estopped from asserting any of the following claims:

1. Recognition of any pretended government other than the Hawaiian Kingdom as both the *de facto* and the *de jure* government of the Hawaiian Islands;
2. Annexation of the Hawaiian Islands by joint resolution in 1898;
3. Establishment of a territorial government in 1900;
4. Administration of the Hawaiian Islands as a non-self-governing territory since 1898 pursuant to Article 73(e) of the U.N. Charter;
5. Establishment of a State government in 1959; and,

The failure of the United States to restore the *de jure* government is a “breach of an international obligation,” and, therefore, an international wrongful act. The severity of this breach has led to the unlawful seizure of Hawaiian independence, imposition of a foreign nationality upon the citizenry of an occupied State, mass migrations and settlement of foreign citizens, and the economic and military exploitation of Hawaiian territory—all stemming from the United States government’s violation of international law and treaties. In a 1999 report for the United Nations Centennial of the First International Peace Conference, Greenwood states:

Accommodation of change in the case of prolonged occupation must be within the framework of the core principles laid down in the Regulations on the Laws and Customs of War on Land and the Fourth Convention, in particular, the principle underlying much of the Regulations on the Laws and Customs of War on Land, namely that the occupying power may not exploit the occupied territories for the benefit of its own population.⁸⁹

Despite the egregious violations of Hawaiian State sovereignty by the United States since January 16, 1893, the principle of estoppel not only serves as a

⁸⁹ CHRISTOPHER GREENWOOD, INTERNATIONAL HUMANITARIAN LAW (LAWS OF WAR): REVISED REPORT PREPARED FOR THE CENTENNIAL OF THE FIRST INTERNATIONAL PEACE CONFERENCE, PURSUANT TO UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS A/RES/52/154 AND A/RES/53/99, 47 (1999).

shield that bars the United States from asserting any legal claim of sovereignty over the Hawaiian Islands, but also a shield that protects the continued existence of the Hawaiian Kingdom, the nationality of its citizenry, and its territorial integrity as they existed in 1893.

6. *A CLAIM OF TITLE OVER THE HAWAIIAN ISLANDS BY ACQUISITIVE PRESCRIPTION*

- 6.1. As pointed out above, the continuity of the Hawaiian State may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, which is not strictly limited to annexation. The United States, in other words, would be entitled to maintain its claim over the Hawaiian Islands so long as it could show some basis for asserting that claim other than merely its original claim of annexation in 1898. The strongest type of claim in this respect is the “continuous and peaceful display of territorial sovereignty.” The emphasis given to the “continuous and peaceful display of territorial sovereignty” in international law derives in its origin from the doctrine of occupation, which allowed states to acquire title to territory that was effectively *terra nullius*. Occupation, in this form, is distinct from military occupation of another State’s territory. It is apparent, however, and in line with the approach of the International Court of Justice in the *Western Sahara Case*,⁹⁰ that the Hawaiian Islands cannot be regarded as *terra nullius* for purpose of acquiring title by mere occupation. According to some, nevertheless, effective occupation may give rise to title by way of what is known as “acquisitive prescription.”⁹¹ As Hall maintained, title or sovereignty “by prescription arises out of a long continued possession, where no original source of proprietary right can be shown to exist, or where possession in the first instance being wrongful, the legitimate proprietor has neglected to assert his right, or has been unable to do so.”⁹² Johnson explains in more detail:

“Acquisitive Prescription is the means by which, under international law, legal recognition is given to the right of a state to exercise sovereignty over land or sea territory in cases where that state has, in fact, exercised its authority in a continuous, uninterrupted, and peaceful manner over the area concerned for a sufficient period of time, provided that all other interested and affected states (in the case of land territory the previous possessor, in the case of sea territory neighboring states and other states whose maritime interests are affected) have acquiesced in this exercise of authority. Such acquiescence is implied in cases where the interested and affected states have failed within a reasonable time to refer the matter to the appropriate international organization or international tribunal or—exceptionally in cases where no such action was possible—have

⁹⁰ I.C.J. Rep. 1975.

⁹¹ For a discussion of the various approaches to this issue see OPPENHEIM, *supra* note 63, at 705-6.

⁹² See HALL, *supra* note 76, at 143.

failed to manifest their opposition in a sufficiently positive manner through the instrumentality of diplomatic protests.”⁹³

Although no case before an international court or tribunal has unequivocally affirmed the existence of acquisitive prescription as a mode of acquiring title to territory,⁹⁴ and although Judge Moreno Quintana in his dissenting opinion in the *Rights of Passage* case⁹⁵ found no place for the concept in international law, there is considerable evidence that points in that direction. For example, the continuous and peaceful display of sovereignty, or some variant thereof, was emphasized as the basis for title in the *Minquiers and Ecrehos Case* (France v. United Kingdom),⁹⁶ the *Anglo-Norwegian Fisheries Case* (United Kingdom v. Norway)⁹⁷ and in the *Island of Palmas Arbitration* (United States v. Netherlands).⁹⁸

- 6.2. If a claim to acquisitive prescription is to be maintained in relation to the Hawaiian Islands, various *indicia* have to be considered including, for example, the length of time of effective and peaceful occupation, the extent of opposition to or acquiescence in that occupation, and, perhaps, the degree of recognition provided by third States. However, “no general rule [can] be laid down as regards the length of time and other circumstances which are necessary to create such a title by prescription. Everything [depends] upon the merits of the individual case.”⁹⁹ As regards the temporal element, the United States could claim to have peacefully and continuously exercised governmental authority in relation to Hawai‘i for over a century. This is somewhat more than was required for purposes of prescription in the *British Guiana-Venezuela Boundary Arbitration*, for example,¹⁰⁰ but it is clear that time alone is certainly not determinative. Similarly, in terms of the attitude of third States, it is evident that apart from the initial protest of the Japanese Government in 1897, none has opposed the extension of United States jurisdiction to the Hawaiian Islands. Indeed the majority of States may be said to have acquiesced in its claim to sovereignty in virtue of acceding to its exercise of sovereign prerogatives in respect of the Islands, but this acquiescence by other States was based on misleading and false information that was presented to the United Nations by the United States as before mentioned. It could be surmised, as well, that the United States misled other States regarding Hawai‘i even prior to the establishment of the United Nations in 1945. It is important, however, not to attach too much emphasis to third

⁹³ D.H.N. Johnson, *Acquisitive Prescription in International Law*, 27 BRIT. Y. B. INT’L L. 332, 353 (1950).

⁹⁴ Prescription may be said to have been recognized in the *Chamizal Arbitration*, 5 AM. J. INT’L L. 782 (1911) 785; the *Grisbadana Arbitration* P.C.I.J. 1909; and the *Island of Palmas Arbitration*, *supra* note 5.

⁹⁵ I.C.J. Rep. 1960, at 6.

⁹⁶ I.C.J. Rep. 1953, at 47

⁹⁷ I.C.J. Rep. 1951, at 116.

⁹⁸ See *Palmas arbitration*, *supra* note 4.

⁹⁹ See OPPENHEIM, *supra* note 63, at 706.

¹⁰⁰ The arbitrators were instructed by their treaty terms of reference to allow title if based upon “adverse holding or prescription during a period of fifty years.” 28 R.I.A.A (1899) 335.

party recognition. As Jennings points out, in case of adverse possession “[r]ecognition or acquiescence on the part of third States... must strictly be irrelevant.”¹⁰¹

- 6.3. More difficult, in this regard, is the issue of acquiescence or protest as between the Hawaiian Kingdom and the United States. In the *Chamizal Arbitration*¹⁰² it was held that the United States could not maintain a claim to the Chamizal tract by way of prescription in part because of the protests of the Mexican government. The Mexican government, in the view of the Commission, had done “all that could be reasonably required of it by way of protest against the illegal encroachment.” Although it had not attempted to retrieve the land by force, the Commission pointed out that:

“however much the Mexicans may have desired to take physical possession of the district, the result of any attempt to do so would have provoked scenes of violence and the Republic of Mexico can not be blamed for resorting to the milder forms of protest contained in its diplomatic correspondence.”¹⁰³

In other words, protesting in any way that might be “reasonably required” should effectively defeat a claim of acquisitive prescription.

- 6.4. Ultimately, a “claim” to prescription is not equal to a “title” by prescription, especially in light of the presumption of title being vested in the State the claim is made against. Johnson acknowledges this distinction when he states that the “length of time required for the establishment of a prescriptive title on the one hand, and the extent of the action required to prevent the establishment of a prescriptive title on the other hand, are invariably matters of fact to be decided by the international tribunal before which the matter is eventually brought for adjudication.”¹⁰⁴ The United States has made no claim to acquisitive prescription before any international body, but, instead, has reported to the United Nations in 1952 the fraudulent claim that the “Hawaiian Islands, by virtue of the Joint Resolution of Annexation and the Hawaiian Organic Act, became an integral part of the United States and were given a territorial form of government which, in the United States political system, precedes statehood.”¹⁰⁵ Furthermore, according to Fauchille:

“a state cannot acquire a title by acquisitive prescription if, although administering a territory, it admits that the sovereignty over that territory belongs to another state. The reason for this is that the acquiescence of the other state, which is a *sine qua non* of acquisitive prescription, is lacking. Or to put in another way, the administering

¹⁰¹ See Oppenheim, *supra* note 63, at 39.

¹⁰² *The Chamizal Arbitration Between the United States and Mexico*, 5 AM. J. INT’L L. 782 (1911).

¹⁰³ *Id.*, at 807.

¹⁰⁴ See Johnson, *supra* note 93, at 354.

¹⁰⁵ See *Communication from the United States of America*, *supra* note 50.

state is by its own admission estopped from claiming a prescriptive title to the territory.”

When President Cleveland accepted, by *exchange of notes*, the police power from the Queen under threat of war, and by virtue of that assignment initiated a presidential investigation that concluded the Queen, as Head of State, was both the *de fact* and *de jure* government of the Hawaiian Islands, and subsequently entered into a second executive agreement to restore the government on condition that the Queen or her successor in office would grant amnesty to the insurgents, the United States admitted that title or sovereignty over the Hawaiian Islands remained vested in the Hawaiian Kingdom and no other. Thus, it is impossible for the United States to claim to have acquired title to the Hawaiian Islands in 1898 from the government of the so-called Republic of Hawai‘i, because the Republic of Hawai‘i, by the United States’ own admission, was “self-declared.”¹⁰⁶ Furthermore, by the terms of the 1893 executive agreements—the *Lili‘uokalani assignment* and the *Agreement of restoration*, the United States recognized the continuing sovereignty of the Hawaiian Kingdom over the Hawaiian Islands despite its government having yet to be restored under the agreement. Therefore, the presumption may also be based on the general principle of international law, *pacta sunt servanda*, whereby an agreement in force is binding upon the parties and must be performed by them in good faith.

B. THE LEGITIMACY OF THE ACTING GOVERNMENT OF THE HAWAIIAN KINGDOM

7. GENERAL CONSIDERATIONS

- 7.1. The presumption that the Hawaiian Kingdom continues to exist as a State under occupation is not entirely unrelated to the existence of an entity claiming to be the effective and legitimate government. A State is a “body of people occupying a definite territory and politically organized”¹⁰⁷ under one government, being the “agency of the state,”¹⁰⁸ that exercises sovereignty, which is the “supreme, absolute and uncontrollable power by which an independent state is governed.”¹⁰⁹ In other words, sovereignty, both internal and external, is an attribute of an independent State, while the government exercising sovereignty is the State’s physical agent. Hoffman emphasizes that a government “is not a State any more than man’s words are the man himself,” but “is simply an expression of the State, an agent for putting into execution

¹⁰⁶ *Joint Resolution To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawai‘i*, 103d Cong., 107 U.S. Stat. 1510 (1993), reprinted in 1 HAW. J. L. & POL. 290 (Summer 2004). The resolution stated, in part, “Whereas, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States.”

¹⁰⁷ BLACK’S LAW DICTIONARY 1407 (6th ed. 1990).

¹⁰⁸ *Id.* at 695.

¹⁰⁹ *Id.* at 1396.

the will of the State.”¹¹⁰ Wright also concluded, “international law distinguishes between a government and the state it governs.”¹¹¹ Therefore, a sovereign State would continue to exist despite its government being overthrown by military force. Crawford explains this distinction with regard to Iraq. He states,

“The occupation of Iraq in 2003 illustrated the difference between ‘government’ and ‘State’; when Members of the Security Council, after adopting SC res 1511, 16 October 2003, called for the rapid ‘restoration of Iraq’s sovereignty,’ they did not imply that Iraq had ceased to exist as a State but that normal governmental arrangements should be restored.”¹¹²

- 7.2. With regard to the recognition of external sovereignty, there are two aspects—recognition of sovereignty and the recognition of government. External sovereignty cannot be recognized with the initial recognition of the government representing the State, and once recognition of sovereignty is granted, Oppenheim asserts that it “is incapable of withdrawal”¹¹³ by the recognizing States. Schwarzenberger also asserts, that “recognition estops [precludes] the State which has recognized the title from contesting its validity at any future time.”¹¹⁴ According to Wheaton:

“The recognition of any State by other States, and its admission into the general society of nations, may depend...upon its internal constitution or form of government, or the choice it may make of its rulers. But whatever be its internal constitution, or form of government, or whoever be its ruler, or even if it be distracted with anarchy, through a violent contest for the government between different parties among the people, the State still subsists in contemplation of law, until its sovereignty is completely extinguished by the final dissolution of the social tie, or by some other cause which puts an end to the being of the State.”¹¹⁵

Therefore, recognition of a sovereign State is a political act with legal consequences.¹¹⁶ The recognition of governments, however, which could change form through constitutional or revolutionary means subsequent to the recognition of State sovereignty, is a purely political act and can be retracted by another government for strictly political reasons. Cuba is a clear example of this principle, where the United States withdrew the recognition of Cuba’s

¹¹⁰ FRANK SARGENT HOFFMAN, *THE SPHERE OF THE STATE OR THE PEOPLE AS A BODY-POLITIC* 19 (1894).

¹¹¹ Quincy Wright, *The Status of Germany and the Peace Proclamation*, 46(2) AM. J. INT’L L. 299, 307 (Apr. 1952).

¹¹² See CRAWFORD, *supra* note 1, at 34, n. 157.

¹¹³ LASSA OPPENHEIM, *INTERNATIONAL LAW* 137 (3rd ed. 1920).

¹¹⁴ Georg Schwarzenberger, *Title to Territory: Response to a Challenge*, 51(2) AM. J. INT’L L. 308, 316 (1957).

¹¹⁵ See WHEATON, *supra* note 64, at 32.

¹¹⁶ GERHARD VON GLAHN, *LAW AMONG NATIONS* 85 (6th ed. 1992).

government under President Fidel Castro, but at the same time this political act did not mean Cuba ceased to exist as a sovereign State. In other words, sovereignty of an independent State, once established, is not dependent upon the political will of other governments, but rather the objective rules of international law and successorship.

8. *THE FORMATION OF THE ACTING GOVERNMENT OF THE HAWAIIAN KINGDOM*

8.1. On December 10, 1995, a general partnership was formed in compliance with an *Act to Provide for the Registration of Co-partnership Firms*, 1880.¹¹⁷ The partnership was named the Perfect Title Company, hereinafter PTC, and functioned as a land title abstracting company.¹¹⁸ Since the enactment of the 1880 Co-partnership Act, members of co-partnership firms within the Kingdom registered their articles of agreements in the Bureau of Conveyances, being a part of the Interior department of the Hawaiian Kingdom. This same Bureau of Conveyances continues to exist and is presently administered by the United States, by its political subdivision, the State of Hawai'i. The law requires a notary public to acknowledge all documents before being registered with the Bureau,¹¹⁹ but there have been no lawful notaries public in the Islands since 1893. All State of Hawai'i notaries public are commissioned under and by virtue of United States law. Therefore, in order for the partners of PTC to get their articles of agreement registered in the Bureau of Conveyances in compliance with the 1880 co-partnership statute, the following protest was incorporated and made a part of PTC's articles of agreement, which stated:

“Each partner also agrees that the business is to be operated in strict compliance to the business laws of the Hawaiian Kingdom as noted in the “Compiled Laws of 1884” and the “session laws of 1884 and 1886.” Both partners are native Hawaiian subjects by birth and therefore are bound and subject to the laws above mentioned. And it is further agreed by both partners that due to the filing requirements of the Bureau of Conveyances to go before a foreign notary public within the Hawaiian Kingdom, they do this involuntarily and against their will.”¹²⁰

8.2. PTC commenced on December 10, 1995, but there was no *military* government to ensure PTC's compliance with the co-partnership statute from that date. The registration of co-partnerships creates a contract between co-partnerships on the one hand, and the Minister of the Interior, representing the *de jure* government, on the other. It is obligatory for co-partnerships to register their articles of agreement with the Minister of the Interior, and for the

¹¹⁷ The partnership act can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%2025.pdf>.

¹¹⁸ PTC partnership agreement can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%2026.pdf>.

¹¹⁹ Hawai'i Revised Statutes, §502-41.

¹²⁰ Co-partnership Agreement establishing Perfect Title Company, December 10, 1995, document no. 95-153346, Hawai'i Bureau of Conveyances.

Minister of the Interior, it is his duty to ensure that co-partnerships maintain their compliance with the statute. This is a contractual relationship, whereby:

“there must be a promise binding the person[s] subject to the obligation; and in order to give a binding force to the promise the obligation must come within the sphere of Agreement. There must be an acceptance of the promise by the person to whom it is made, so that by their mutual consent the one is bound to the other. A Contract then springs from the offer of a promise and its acceptance.”¹²¹

The registration of co-partnerships is the offer of the promise by its members to abide by the obligation imposed by the statute, and the acceptance of this offer by the Interior department creates a contractual relationship whereby “one is bound to the other.” Section 7 of the 1880 Co-partnership Act clearly outlines the obligation imposed upon the members of co-partnerships in the Kingdom, which states:

The members of every co-partnership who shall neglect or fail to comply with the provisions of this law, shall severally and individually be liable for all the debts and liabilities of such co-partnership and may be severally sued therefore, without the necessity of joining the other members of the co-partnership in any action or suit, and shall also be severally liable upon conviction, to a penalty not exceeding five dollars for each and every day while such default shall continue; which penalties may be recovered in any Police or District Court.¹²²

The partners of PTC desired to establish a legitimate co-partnership pursuant to Hawaiian Kingdom law and in order for the title company to exist as a legal co-partnership firm, the *de jure* government had to be reestablished in an *acting* capacity in order to serve as a necessary party to the contractual relationship created under and by virtue of the statute. An acting official is “not an appointed incumbent, but merely a *locum tenens*, who is performing the duties of an office to which he himself does not claim title.”¹²³ It is an official that temporarily assumes the duties and authority of government.

- 8.3. The last legitimate Hawaiian Legislative Assembly of 1886 was prevented from reconvening as a result of the 1887 rebellion. The subsequent Legislative Assembly of 1887 was based on an illegal constitution, which altered existing voting rights, and led to the illegal election of the 1887 Legislature. As a result, there existed no legitimate Nobles in the Legislative Assembly when Queen Lili’uokalani ascended to the Office of Monarch in 1891, and therefore, the Queen was unable to obtain confirmation for her named successors from those

¹²¹ WILLIAM R. ANSON, PRINCIPLES OF THE LAW OF CONTRACT 11 (1880).

¹²² HAWAIIAN KINGDOM, COMPILED LAWS (CIVIL CODE) 649 (1884). The Compiled Laws can be accessed online at: <http://hawaiiankingdom.org/civilcode/index.shtml>.

¹²³ See BLACK’S LAW, *supra* note 107, at 26.

Nobles of the 1886 Legislative Assembly as required by the 1864 Constitution. Tragically, when the Queen died on November 11, 1917, there were no lawful successors to the Throne. In the absence of a confirmed successor to the Throne by the Nobles of the Legislative Assembly, Article 33 of the Constitution of 1864 provides:

“should a Sovereign decease...and having made no last Will and Testament, the Cabinet Council at the time of such decease 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.”

Hawaiian law did not assume that the whole of the Hawaiian government would be made vacant, and, consequently, the law did not formalize provisions for the reactivation of the government in extraordinary circumstances. Therefore, a deliberate course of action was taken to reactivate the Hawaiian government by and through its executive branch as officers *de facto*. In view of such an extreme emergency, Oppenheimer states that, “a temporary deviation from the wording of the constitution is justifiable if this is necessary to conserve the sovereignty and independence of the country.”¹²⁴

When properly interpreted, the 1864 Constitution provides that the Cabinet Council shall be a Council of Regency until a proper Legislative Assembly can be convened to “elect by ballot some native Ali‘i [Chief] of the Kingdom as Successor to the Throne.” It further provides that the Regent or Council of Regency “shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King.”¹²⁵ The Constitution also provides that the Cabinet Council “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.” Interpretation of these constitutional provisions allows for the Minister of

¹²⁴ F.E. Oppenheimer, “Governments and Authorities in Exile,” 36 AM. J. INT’L L. 581 (1942).

¹²⁵ Hawaiian constitution, art. 33, provides: 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 decease, leaving a Minor Heir, and having made no last Will and Testament, the Cabinet Council at the time of such decease 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.”

Interior to assume the powers vested in the Cabinet Council in the absence of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General, and consequently serve as Regent. This is a similar scenario that took place in 1940 when German forces invaded Belgium and captured King Leopold. As a result, the Belgian cabinet became a government in exile and, as a council of Regency, assumed all powers constitutionally vested in the King. Oppenheimer explains:

As far as Belgium is concerned, the capture of the king did not create any serious constitutional problems. According to Article 82 of the Constitution of February 7, 1821, as amended, the cabinet of ministers have to assume supreme executive power if the King is unable to govern. True, the ministers are bound to convene the House of Representatives and the Senate and to leave it to the decision of the united legislative chambers to provide for a regency; but in view of the belligerent occupation it is impossible for the two houses to function. While this emergency obtains, the powers of the King are vested in the Belgian Prime Minister and the other members of the cabinet.¹²⁶

- 8.4. The 1880 Co-partnership Act requires members of co-partnerships to register their articles of agreement in the Bureau of Conveyances, which is within the Interior department.¹²⁷ The Minister of the Interior holds a seat of government as a member of the Cabinet Council, together with the other Ministers. Article 43 of the Constitution provides that, “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.” Necessity dictated that in the absence of any “deputies or clerks” of the Interior department, the partners of a registered co-partnership could assume the duty of the same because of the current state of affairs. Therefore, it was reasonable that partners of a registered co-partnership could assume the powers vested in the Registrar of the Bureau of Conveyances in the absence of the same; then assume the powers vested in the Minister of Interior in the absence of the same; then assume the powers constitutionally vested in the Cabinet Council in the absence of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General; and, finally assume the power constitutionally vested in the Cabinet as a Regency. A regency is defined as “the man or body of men intrusted with the vicarious government of a kingdom during the minority, absence, insanity, or other disability of the [monarch].”¹²⁸
- 8.5. With the specific intent of assuming the “seat of Government,” the partners of PTC formed a second partnership called the Hawaiian Kingdom Trust

¹²⁶ *Id.*, at 569.

¹²⁷ See COMPILED LAWS, *supra* note 122, at §1249.

¹²⁸ See BLACK’S LAW, *supra* note 107, at 1282.

Company, hereinafter HKTC, on December 15, 1995.¹²⁹ The partners intended that this registered partnership would serve as a provisional surrogate for the Council of Regency. Therefore, and in light of the ascension process explained above, HKTC could then serve as officers *de facto* for the Registrar of the Bureau of Conveyances, the Minister of Interior, the Cabinet Council, and ultimately as the Council of Regency. Article 1 of HKTC 's deed of general partnership provided:

“The above mentioned parties have agreed to form a general partnership under the firm name of Hawaiian Kingdom Trust Company in the business of administering, investigating, determining and the issuing of land titles, whether in fee, or for life, or for years, in such manner as Hawaiian law prescribes... The company will serve in the capacity of *acting* for and on behalf of the Hawaiian Kingdom government. The company has adopted the Hawaiian Constitution of 1864 and the laws lawfully established in the administration of the same. The company is to commence on the 15th day of December, A.D. 1995, and shall remain in existence until the absentee government is re-established and fully operational, upon which all records and monies of the same will be transferred and conveyed over to the office of the Minister of Interior, to have and to hold under the authority and jurisdiction of the Hawaiian Kingdom.”

Thirty-eight deeds of trusts conveyed by Hawaiian subjects to HKTC acknowledged the trust as a company “acting for and on behalf of the Hawaiian Kingdom government” and outlined the role of the trust company and its fiduciary duty it had to its beneficiaries.¹³⁰ HKTC was not only competent to serve as the *acting* Cabinet Council, but also possessed a fiduciary duty toward its beneficiaries to serve in that capacity until the government is re-established *de jure* in accordance with the terms of the 1893 *Restoration agreement*. According to Pomeroy:

“Active or special trusts are those in which, either from the express direction of the language creating the trust, or from the very nature of the trust itself, the trustees are charged with the performance of active and substantial duties with respect to the control, management, and disposition of the trust property for the benefit of the *cestui que trustent* [beneficiary of a trust]. They may, except when restricted by

¹²⁹ HKTC partnership agreement can be accessed online at:

<http://hawaiiankingdom.org/pdf/Annex%2027.pdf>.

¹³⁰ See Deeds of Trust to the Hawaiian Kingdom Trust Company, a general partnership, Doc. no.'s 96-004246, 96-006277, 96-014116, 96-026387, 96-026388, 96-028714, 96-024845, 96-032930, 96-044551, 96-044550, 96-047382, 96-047380, 96-047379, 96-047381, 96-056981, 96-052727, 96-060519, 96-032728, 96-057667, 96-057668, 96-060520, 96-061209, 96-061207, 96-056980, 96-052729, 96-063384, 96-063385, 96-063382, 96-057664, 96-019923, 96-046712, 96-063386, 96-063382, 96-063383, 96-066996, 96-061208 and 96-046711, State of Hawai'i Bureau of Conveyances. One the deeds of trust (document no. 96-014116) can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%2028.pdf>.

statute, be created for every purpose not unlawful, and, as a general rule, may extend to every kind of property, real and personal.”¹³¹

The purpose of HKTC was two fold; first, to ensure PTC complies with the co-partnership statute, and, second, provisionally serve as the government of the Hawaiian Kingdom. What became apparent was the seeming impression of a conflict of interest, whereby the duty to comply and the duty to ensure compliance was vested in the same two partners of the two companies. Therefore, in order to avoid this apparent conflict of interest, the partners of both PTC and HKTC, reasoned that an *acting* Regent, having no interests in either company, should be appointed to serve as representative of the Hawaiian government. Since HKTC assumed to represent the interests of the Hawaiian government in an acting capacity, the trustees would therefore make the appointment. The trustees looked to Article XXXI, Chapter XI, Title 3 of the Hawaiian Civil Code, whereby the *acting* Regency would be constitutionally authorized to direct the executive branch of the government in the formation and execution of the reconvening of the Legislative Assembly, so that the government could procedurally move from provisional to *de jure*.¹³²

- 8.6. It was agreed that David Keanu Sai, now the present Ambassador-at-large of the *acting* government and author of this Brief, would be appointed to serve as *acting* Regent, but could not retain an interest in the two companies prior to the appointment. In that meeting, it was agreed upon and decided that Ms. Nai’a-Ulumaimalu would replace the author as trustee of HKTC and partner of PTC. The plan was to maintain the standing of the two partnerships under the co-partnership statute, and not have them lapse into sole-proprietorships. To accomplish this, the author would relinquish his entire fifty percent (50%) interest by deed of conveyance in both companies to Lewis;¹³³ after which Lewis would convey a redistribution of interest to Ms. Nai’a-Ulumaimalu,¹³⁴ whereby the former would hold a ninety-nine percent (99%) interest in the two companies and the latter a one percent (1%) interest in the same. In order to have these two transactions take place simultaneously without affecting the standing of the two partnerships, both deeds of conveyance would happen on the same day but won’t take effect until the following day, February 28, 1996. These conveyances were registered in the Bureau of Conveyances in conformity with the 1880 Co-partnership Act. With the transactions completed, the Trustees then appointed the author as *acting* Regent on March 1, 1996, and thereafter filed a notice of this appointment with the Bureau of

¹³¹ JOHN NORTON POMEROY, A TREATISE ON EQUITY JURISPRUDENCE AS ADMINISTERED IN THE UNITED STATES OF AMERICA, 553 (1907).

¹³² See COMPILED LAWS, *supra* note 122, 214-234.

¹³³ The Sai to Lewis deed can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%2030.pdf>.

¹³⁴ The Lewis to Nai’a-Ulumaimalu deed can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%2031.pdf>.

Conveyances.¹³⁵ Thereafter, HKTC resumed its role as a general partnership within the meaning of the 1880 Co-partnership Act, and no longer served as “a company *acting* for and on behalf of the Hawaiian Kingdom government” and prepared for the dissolution of the company. On May 15, 1996, the Trustees conveyed by deed all of its right, title and interest acquired by thirty-eight deeds of trust to the *acting* Regent, and stipulated that the company would be dissolved in accordance with the provisions of its deed of general partnership on June 30, 1996.¹³⁶

- 8.7. The transfer and subsequent dissolution, was made in accordance with section 3 of the 1880 Co-partnership Act, which provides that “whenever any change shall take place in the constitution of any such firm...a statement of such change or dissolution shall also be filed in the said office of the Minister of the Interior, within one month from such...dissolution.”¹³⁷ On February 28, 1997, a Proclamation by the *acting* Regent announcing the restoration of the Hawaiian government was printed in the March 9, 1997 issue of the Honolulu Sunday Advertiser newspaper. The proclamation stated, in part, that the:

“Hawaiian Monarchical system of Government is hereby re-established, [and the] Civil Code of the Hawaiian Islands as noted in the Compiled Laws of 1884, together with the session laws of 1884 and 1886 and the Hawaiian Penal Code are in full force. All Hawaiian Laws and Constitutional principles not consistent herewith are void and without effect.”¹³⁸

Since the appointment of the *acting* Regent, there have been twenty-six commissions that filled vacancies of the executive and judicial departments. These governmental positions, as statutorily provided, comprise officers *de facto* of the Hawaiian government while under American occupation. Governmental positions that are necessary for the reconvening of the Legislative Assembly in accordance with Title III of the Civil Code would be filled by commissioned officers *de facto*.¹³⁹

¹³⁵ HKTC’s notice of appointment can be accessed online at:

<http://hawaiiankingdom.org/pdf/Annex%2032.pdf>.

¹³⁶ HKTC’s deed to acting Regent can be accessed online at:

<http://hawaiiankingdom.org/pdf/Annex%2033.pdf>.

¹³⁷ See Partnership Act, *supra* note 117.

¹³⁸ Proclamation of *Acting* Regent declaring the Hawaiian Monarchical form of Government is re-established, February 28, 1997, published in the March 9, 1997 issue of the Honolulu Sunday Advertiser. Also recorded in its entirety in the Bureau of Conveyances as document no. 97-027541.

¹³⁹ In September 1999, the *acting* Regent commissioned Peter Umialiloa Sai as *acting* Minister of Foreign Affairs, Kau’i P. Sai-Dudoit, formerly known as Kau’i P. Goodhue, as *acting* Minister of Finance, and Gary V. Dubin, Esquire, as *acting* Attorney General. At a meeting of the Cabinet Council on 10 September 1999, it was determined by resolution “that the office of the Minister of Interior shall be resumed by David Keanu Sai, thereby absolving the office of the Regent, *pro tempore*, and the same to be replaced by the Cabinet Council as a Council of Regency, *pro tempore*, within the meaning of Article 33 of the Constitution of the Country.” The Agent serves as Prime Minister and chairman of the *acting* Council of Regency.

- 8.8. The Hawaiian government did not foresee the possibility of its territory subjected to an illegal and prolonged occupation, where indoctrination and the manipulation of its political history affected the psyche of its national population. Therefore, it did not provide a process for reinstating the government, being the organ of the State, either in exile or within its own territory. But at the same time, it did not place any constitutional or statutory limitations upon the restoration of its government that could serve as a bar to its reinstatement—save for the legal parameters of *necessity*. The legal basis for the reassertion of Hawaiian governance, by and through a Hawaiian general partnership statute, is clearly extraordinary, but the exigencies of the time demanded it. In the absence of any Hawaiian subjects adhering to the statutory laws of the country as provided for by the country’s constitutional limitations, the abovementioned process was established for the establishment of an *acting* Regency, pending the reconvening of the Legislative Assembly to elect by ballot a Regent or Regency *de jure* as provided for under Article 22 of the Constitution. Wolff states, “in so far as conditions provided for in the constitutional law cannot be complied with owing to the occupation of the country by the enemy, a dispossessed government can act without being compelled to fulfill those conditions.”¹⁴⁰ Also commenting on exiled governments, Marek explains that, “while the requirement of internal legality must in principle be fulfilled for an exiled government to possess the character of a State organ, minor flaws in such legality are easily cured by the overriding principle of its actual uninterrupted continuity.”¹⁴¹ Oppenheimer also explains “such government is the only *de jure* sovereign power of the country the territory of which is under belligerent occupation.”¹⁴² It follows, *a fortiori*, that when an “occupant fails to share power with the lawful government under the auspices of international law, the latter is not precluded from taking whatever countermeasures it can in order to protect its interests during and after the occupation.”¹⁴³ Bateman states the “duty correlative of the right of political existence, is obviously that of political self-preservation; a duty the performance of which consists in constant efforts to preserve the principles of the political constitution.”¹⁴⁴ Political self-preservation is adherence to the legal order of the State, whereas national self-preservation is where the principles of the constitution are no longer acknowledged, *i.e.* revolution.¹⁴⁵
- 8.9. The establishment of an *acting* Regent—an officer *de facto*, would be a political act of self-preservation, not revolution, and be grounded upon the legal doctrine of “limited necessity.” According to de Smith, deviations from

¹⁴⁰ Ernst Wolff, *The International Position of Dispossessed Governments at Present in England*, 6 MOD. L. REV. 215 (1942-1943).

¹⁴¹ See MAREK, *supra* note 3, at 98.

¹⁴² See Oppenheimer, *supra* note 124, at 568.

¹⁴³ EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 212 (1993).

¹⁴⁴ William O. Bateman, *Political and Constitutional Law of the United States of America* (G.I. Jones and Company, 1876), 22.

¹⁴⁵ *Id.*

a State's constitutional order "can be justified on grounds of necessity."¹⁴⁶ He continues to explain, "State necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution."¹⁴⁷ Lord Pearce also states that there are certain limitations to the principle of necessity, "namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful... Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign."¹⁴⁸ Judge Gates took up the matter of the legal doctrine of necessity in *Chandrika Persaud v. Republic of Fiji*, and drew from the decision in the *Mitchell case*,¹⁴⁹ which provided that the requisite conditions for the principle of necessity consists of:

1. An imperative necessity must arise because of the existence of exceptional circumstances not provided for in the Constitution, for immediate action to be taken to protect or preserve some vital function of the State;
2. There must be no other course of action reasonably available;
3. Any such action must be reasonably necessary in the interest of peace, order, and good government; but it must not do more than is necessary or legislate beyond that;
4. It must not impair the just rights of citizens under the Constitution; and,
5. It must not be one the sole effect and intention of which is to consolidate or strengthen the revolution as such.

Brookfield summarized the principle of necessity as the "power of a Head of State under a written Constitution extends by implication to executive acts, and also legislative acts taken temporarily (that is, until confirmed, varied or disallowed by the lawful Legislature) to preserve or restore the Constitution, even though the Constitution itself contains no express warrant for them."¹⁵⁰ Brookfield also explains "such powers are not dependent on the words of a particular Constitution, except in so far as that Constitution designates the authority in whom the implied powers would be found to reside."¹⁵¹

- 8.10. The assumption by private citizens up the chain of constitutional authority in government to the office of Regent, as enumerated under Article 33 of the Constitution, is a *de facto* process born out of necessity. Judge Cooley defines an officer *de facto* "to be one who has the reputation of being the officer he

¹⁴⁶ STANLEY A. DE SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW, 80 (1986).

¹⁴⁷ *Id.*

¹⁴⁸ *Madzimbamuto v. Lardner-Burke*, 1 A.C. 645, 732 (1969).

¹⁴⁹ *Mitchell v. Director of Public Prosecutions*, L.R.C. (Const.) 35, 88–89 (1986).

¹⁵⁰ F.M. Brookefield, *The Fiji Revolutions of 1987*, NEW ZEALAND L. J. 250, 251 (July 1988).

¹⁵¹ *Id.*

assumes to be, and yet is not a good officer in point of law,” but rather “comes in by claim and color of right.”¹⁵² According to Chief Justice Steere, the “doctrine of a *de facto* officer is said to have originated as a rule of public necessity to prevent public mischief and protect the rights of innocent third parties who may be interested in the acts of an assumed officer apparently clothed with authority and the courts have sometimes gone far with delicate reasoning to sustain the rule where threatened rights of third parties were concerned.”¹⁵³ “Officers *de facto*” are distinguished from a “*de facto* government.” The former is born out of a *de jure* government under and by virtue of the principle of necessity, while the latter is born out of revolution.

- 8.11. As a result of the continuity of the Hawaiian State under the terms of international law, it would normally be supposed that a government established in accordance with its constitution and laws would be competent to represent it internationally. Marek emphasizes that:

“it is always the legal order of the State which constitutes the legal basis for the existence of its government, whether such government continues to function in its own country or goes into exile; but never the delegation of the territorial State nor any rule of international law other than the one safeguarding the continuity of an occupied State. The relation between the legal order of the territorial State and that of the occupied State...is not one of delegation, but of co-existence.”¹⁵⁴

The actual exercise of that competence, however, will depend upon other States agreeing to enter into diplomatic relations with such a government. This was, in the past at least, conditioned upon recognition, but many states in recent years have moved away from the practice of recognizing governments, preferring any such recognition to be inferred from their acts. The normal conditions for recognition are that the government concerned should be either legitimately constituted under the laws of the State concerned, or that it should be in effective control of the territory. Ideally, it should possess both attributes. Ineffective, but, lawful, governments normally only maintain their status as recognized entities during military occupation, or while there remains the possibility of their returning to power.

- 8.12. While Hawai‘i was not at war with the United States, but rather a neutral State since the Spanish-American War, the international laws of occupation would still apply. With specific regard to occupying neutral territory, the Arbitral Tribunal, in its 1927 case, *Coenca Brothers vs. Germany*, concluded that “the occupation of Salonika by the armed forces of the Allies constitutes a

¹⁵² THOMAS M. COOLEY, A TREATISE ON THE LAW OF TAXATION, 185 (1876).

¹⁵³ *Carpenter v. Clark*, 217 Michigan 63, 71 (1921).

¹⁵⁴ See MAREK, *supra* note 3, at 91.

violation of the neutrality of that country.”¹⁵⁵ Later, in the 1931 case, *In the matter of the Claim Madame Chevreau against the United Kingdom*, the Arbitrator concluded that the status of the British forces while occupying Persia (Iran)—a neutral State in the First World War—was analogous to “belligerent forces occupying enemy territory.”¹⁵⁶ Oppenheim observes that an occupant State on neutral territory “does not possess such a wide range of rights with regard to the occupied country and its inhabitants as he possesses in occupied enemy territory.”¹⁵⁷ Article 2 of the Fourth Geneva Convention (1949) states:

“The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”

- 8.13. On the face of the Hague Regulations it appears to apply only to territory belonging to an enemy, but Feilchenfeld states, “it is nevertheless, usually held that the rules of belligerent occupation will also apply where a belligerent, in the course of the war, occupied neutral territory, even if the neutral power should have failed to protest against the occupation.”¹⁵⁸ The law of occupation is not only applied with equal force and effect, but the occupier is also greatly shorn of its belligerent rights in Hawaiian territory as a result of the Islands’ neutrality. Therefore, the United States cannot impose its own domestic laws without violating international law. This principle is clearly laid out in Article 43 of the Hague Regulations, which states, “the authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and civil life, while respecting, unless absolutely prevented, the laws in force in the country.” Referring to the American occupation of Hawai‘i, 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

¹⁵⁵ *Coenca Brothers v. Germany*, Greco-German Mixed Arbitral Tribunal, Case No. 389 (1927), reprinted in ANN. DIG. PUB. INT’L. L. CASES, YEARS 1927 AND 1928 570, 571 (1931).

¹⁵⁶ *In the Matter of the Claim Madame Chevreau Against the United Kingdom*, 27 AM. J. INT’L. L. 153, 160 (1933).

¹⁵⁷ LASSA OPPENHEIM, INTERNATIONAL LAW 241 (7th ed. 1948-52).

¹⁵⁸ ERNST FEILCHENFELD, THE INTERNATIONAL ECONOMIC LAW OF BELLIGERENT OCCUPATION 8 (1942).

provides for the co-existence of two distinct legal orders, that of the occupier and the occupied.”¹⁵⁹

- 8.14. According to Glahn, there are three distinct systems of law that exist in an occupied territory: “the indigenous law of the legitimate sovereign, to the extent that it has not been necessary to suspend it; the laws (legislation, orders, decrees, proclamations, and regulations) of the occupant, which are gradually introduced; and the applicable rules of customary and conventional international law.”¹⁶⁰ Hawai‘i’s sovereignty is maintained and protected as a subject of international law, in spite of the absence of an effective government since 1893. In other words, the United States should have administered Hawaiian Kingdom law as defined by its constitution and statutory laws, similar to the U.S. military’s administration of Iraqi law in Iraq with portions of the law suspended due to military necessity.¹⁶¹ A United States Army regulation on the law of occupation recognizes not only the sovereignty of the occupied State, but also bars annexation of the territory during hostilities because of the continuity of the invaded State’s sovereignty. In fact, United States Army regulations on the laws of occupation not only recognize the continued existence of the sovereignty of the occupied State, but,

“...confers upon the invading force the means of exercising control for the period of occupation. It does not transfer sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force. It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress.”¹⁶²

- 8.15. It is abundantly clear that the United States occupied the Hawaiian Islands for the purpose of waging the war against Spain, as well as fortifying the Islands as a military outpost for the defense of the United States in future conflicts with the convenience of the puppet government it installed on 17 January 1893. According to the United States Supreme Court, “Though the [annexation] resolution was passed July 7, [1898] the formal transfer was not made until August 12, when, at noon of that day, the American flag was raised over the government house, and the islands ceded with appropriate ceremonies to a representative of the United States.”¹⁶³ Patriotic societies and many of the Hawaiian citizenry boycotted the ceremony and “they protested

¹⁵⁹ 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 J. INT’L L. 655, 682 (2002).

¹⁶⁰ See VON GLAHN, *supra* note 116, at 774.

¹⁶¹ David J. Scheffer, *Beyond Occupation Law*, 97(4) AM. J. INT’L L. 842-860 (Oct. 2003).

¹⁶² “The Law of Land Warfare,” *U.S. Army Field Manual 27-10* §358 (July 1956).

¹⁶³ *Territory of Hawai‘i v. Mankichi*, 190 U.S. 197, 212 (1903).

annexation occurring without the consent of the governed.”¹⁶⁴ The “power exercising effective control within another’s sovereign territory has only temporary managerial powers,” and, during “that limited period, the occupant administers the territory on behalf of the sovereign.”¹⁶⁵ The actions taken by the McKinley administration, with the consent of the Congress by joint resolution, clearly intended to mask the violation of international law as if the annexation took place by a voluntary treaty thereby giving the appearance of cession. As Marek states, “a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State.”¹⁶⁶ Although the United States signed and ratified both the 1899 and the 1907 Hague Regulations, which post-date the occupation of the Hawaiian Islands, the “text of Article 43,” according to Benvenisti, “was accepted by scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary international law.”¹⁶⁷ Graber also states, that “nothing distinguishes the writing of the period following the 1899 Hague code from the writing prior to that code.”¹⁶⁸ Consistent with this understanding of the international law of occupation during the Spanish-American War, Smith reported that the “military governments established in the territories occupied by the armies of the United States were instructed to apply, as far as possible, the local laws and to utilize, as far as seemed wise, the services of the local Spanish officials.”¹⁶⁹ In light of this instruction to apply the local laws of the occupied State, the disguised annexation during the Spanish-American War, together with its ceremony on August 12, 1898 on the grounds of ‘Iolani Palace, would appear to show clear intent to conceal an illegal occupation.

8.16. The case of the *acting* government is unique in several respects. While it claims to be regarded as the “legitimate” government of Hawai’i, its existence

¹⁶⁴ TOM COFFMAN, *NATION WITHIN: THE HISTORY OF THE AMERICAN OCCUPATION OF HAWAI’I* 322 (2nd ed. 2009). Coffman initially published this book in 1998 titled *Nation Within: The Story of the American Annexation of the Nation of Hawai’i*. In his second edition published in 2009 he explains the change. Coffman explains:

“I am compelled to add the continued relevance of this book reflects a far-reaching political, moral and intellectual failure of the United States to recognize and deal with its takeover of Hawai’i. In the book’s subtitle, the word *Annexation* has been replaced by the word *Occupation*, referring to America’s occupation of Hawai’i. Where annexation connotes legality by mutual agreement, the act was not mutual and therefore not legal. Since by definition of international law there was no annexation, we are left then with the word *occupation*. In making this change, I have embraced the logical conclusion of my research into the events of 1893 to 1898 in Honolulu and Washington, D.C. I am prompted to take this step by a growing body of historical work by a new generation of Native Hawaiian scholars. Dr. Keanu Sai writes, ‘The challenge for...the fields of political science, history, and law is to distinguish between the rule of law and the politics of power.’ In the history of Hawai’i, the might of the United States does not make it right.”

¹⁶⁵ See BENVENISTI, *supra* note 143, at 6.

¹⁶⁶ See MAREK, *supra* note 3, at 110.

¹⁶⁷ See BENVENISTI, *supra* note 143, at 8.

¹⁶⁸ DORIS GRABER, *THE DEVELOPMENT OF THE LAW OF BELLIGERENT OCCUPATION: 1863-1914*, 143 (1949).

¹⁶⁹ Munroe Smith, *Record of Political Events*, 13(4) POL. SCI. Q. 745, 748 (Dec. 1898).

is not only dependent upon the issue of State continuity, but also its existence is dependent upon exercising governmental control. Governmental control, however, is nearly non-existent within the Hawaiian Islands as a result of a prolonged and illegal occupation, but governmental control can be effectively exercised outside of the Hawaiian Islands. After all, the nature of belligerent occupation is such as to preserve the original competence of indigenous institutions in occupied territories. The *acting* government, as officers *de facto*, is an extension of the original *de jure* government of the Hawaiian Kingdom as it stood in 1893. Therefore, in such circumstances, recognition of the authority of the *acting* government could be achieved by other States through *de facto* recognition under the “doctrine of acquiescence,” and not *de facto* recognition of a “new” government or State that comes about through a successful revolution. Recognition of a *de facto* government is political and acts of pure policy by States, because they attempt to change or alter the legal order of an already established and recognized personality—whereas, recognition of *de facto* officers does not affect the legal order of a State that has been the subject of prolonged occupation. It is within these parameters that the *acting* government, as *de facto* officers by necessity, cannot claim to represent the people *de jure*, but only, at this time, represent the legal order of the Hawaiian State as a result of the limitations imposed upon it by the laws of occupation and the duality of two legal orders existing in one in the same territory—that of the occupier and the occupied.

- 8.17. The *acting* government has restored the executive and the judicial branches of government. Heading the executive branch of the *acting* government is the Council of Regency, which is comprised of the author of this Brief, as *acting* Minister of the Interior and Chairman of the Council, as well as *acting* Ambassador-at-large, His Excellency Peter Umialiloa Sai as *acting* Minister of Foreign Affairs and Vice-Chairman of the Council, Her Excellency Kau‘i P. Sai-Dudoit as *acting* Minister of Finance, and His Excellency Dexter Ke‘eaumoku Ka‘iama, *Esq.*, as *acting* Attorney General. Heading the Judicial branch of the *acting* government is the Supreme Court, which is comprised of Alvin K. Nishimura, *Esq.*, as *acting* Chief Justice and Chancellor of the Kingdom, and Allen K. Hoe, *Esq.*, as *acting* First Associate Justice.

9. DE FACTO RECOGNITION OF THE ACTING GOVERNMENT

- 9.1. Under international law, MacGibbon states the “function of acquiescence may be equated with that of consent,” whereby “it constitutes a procedure for enabling the seal of legality to be set upon rules which were formerly in process of development and upon rights which were formerly in process of consolidation.”¹⁷⁰ He explains the “primary purpose of acquiescence is evidential; but its value lies mainly in the fact that it serves as a form of recognition of legality and condonation of illegality and provides a criterion

¹⁷⁰ I.C. MacGibbon, *The Scope of Acquiescence in International Law*, 31 BRIT. Y. B. INT’L L. 143, 145 (1954).

which is both objective and practical.”¹⁷¹ According to Brownlie, “There is a tendency among writers to refer to any representation or conduct having legal significance as creating estoppel, precluding the author from denying the ‘truth’ of the representation, express or implied.”¹⁷² State practice has also acknowledged not only the function of acquiescence, but also the consequence of acquiescence. Lauterpacht explains:

“The absence of protest, may, in addition, in itself become a source of legal right inasmuch as it is related to—or forms a constituent element of—estoppel or prescription. Like these two generally recognized legal principles, the far-reaching effect of the failure to protest is not a mere artificiality of the law. It is an essential requirement of stability—a requirement even more important in the international than in other spheres; it is a precept of fair dealing inasmuch as it prevents states from playing fast and loose with situations affecting others; and it is in accordance with equity inasmuch as it protects a state from the contingency of incurring responsibilities and expense, in reliance on the apparent acquiescence of others, and being subsequently confronted with a challenge on the part of those very states.”¹⁷³

In a memorandum by Walter Murray, the United States Chief of the Division of Near Eastern Affairs, regarding the attitude of the United States toward Italy’s unilateral annexation of Ethiopia, Murray stated, “It may be argued, therefore, that our failure to protest the recent decree extending Italian jurisdiction over American nationals (and other foreigners in Ethiopia) or its application to American nationals would *not* constitute *de jure* recognition of the Italian annexation of Ethiopia. However, our failure to protest might be interpreted as a recognition of the *de facto* conditions in Ethiopia.”¹⁷⁴ In other words, the United States’ failure to protest provided *tacit* acquiescence, and, therefore, *de facto* recognition of the conditions in Ethiopia.

- 9.2. Between 1999 and 2001, the *acting* government represented the Hawaiian Kingdom in arbitral proceedings before the Permanent Court of Arbitration.¹⁷⁵ “In *Larsen v. the Hawaiian Kingdom*, Lance Paul Larsen, a resident of the state of Hawaii, sought redress from the Hawaiian Kingdom for its failure to protect him from the United States and the State of Hawai‘i.”¹⁷⁶ The Arbitral Tribunal comprised of Professor James Crawford, SC, Presiding Arbitrator,

¹⁷¹ *Id.*

¹⁷² See BROWNLIE, *supra* note 53, at 640.

¹⁷³ H. Lauterpacht, *Sovereignty Over Submarine Areas*, 27 BRIT. Y. B. INT’L L. 376, 395 (1950).

¹⁷⁴ United States Department of State, *Foreign Relations of the United States*, vol. III, 241 (1936).

¹⁷⁵ *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566 (2001); see also the website of the Permanent Court of Arbitration at: http://www.pca-cpa.org/showpage.asp?pag_id=1159.

¹⁷⁶ Bederman & Hilbert, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawai‘i*, 95 AM. J. INT’L L. 927 (2001); see also David Keanu Sai, *American Occupation of the Hawaiian State: A Century Unchecked*, 1 HAW. J. L. & POL. 46 (Summer 2004); and Dumberry, *supra* note 159.

who at the time of the proceedings was a member of the United Nations International Law Commission and *Special Rapporteur* on State Responsibility (1997-2001); Professor Christopher Greenwood, QC, Associate Arbitrator, who now serves as a Judge on the International Court of Justice since 6 February 2009; and Gavan Griffith, QC, Associate Arbitrator, who served as former Solicitor General for Australia. Early in the proceedings, the *acting* government, by telephone conversation with Secretary-General van den Hout of the Permanent Court of Arbitration, was requested to provide a formal invitation to the United States to join in the arbitration. Here follows the letter documenting the formal invitation done in Washington, D.C., on March 3, 2000, and later filed with the registry of the Permanent Court of Arbitration.¹⁷⁷

Mr. John Crook
Assistant Legal Adviser for United Nations Affairs
Office of the Legal Adviser
United States Department of State
2201 C Street,
N.W. Room 3422 NS
Washington, D.C. 20520

Re: Letter confirming telephone conversation of March 3, 2000 relating to arbitral proceedings at the Permanent Court of Arbitration, Lance Paul Larsen vs. The Hawaiian Kingdom

Sir,

This letter is to confirm our telephone conversation today at Washington, D.C. The day before our conversation Ms. Ninia Parks, esquire, Attorney for the Claimant, Mr. Lance Larsen, and myself, Agent for the Respondent, Hawaiian Kingdom, met with Sonia Lattimore, Office Assistant, L/EX, at 10:30 a.m. on the ground floor of the Department of State. I presented her with two (2) binders, the first comprised of an Arbitration Log Sheet, Lance Paul Larsen vs. The Hawaiian Kingdom, with accompanying documents on record before the Permanent Court of Arbitration at The Hague, Netherlands. The second binder comprised of divers documents of the Acting Council of Regency as well as diplomatic correspondence with treaty partners of the Hawaiian Kingdom.

I stated to Ms. Lattimore that the purpose of our visit was to provide these documents to the Legal Department of the U.S. Department of State in order for the U.S. Government to be apprised of the arbitral proceedings already in train and that the Hawaiian Kingdom, by consent of the Claimant, extends an opportunity for the United States to join in the arbitration as a party. She assured me that the package will be given to Mr. Bob McKenna for review and assignment to

¹⁷⁷ *Acting Government of the Hawaiian Kingdom, Letter confirming telephone conversation with U.S. State Department relating to arbitral proceedings at the Permanent Court of Arbitration, March 3, 2000*, 1 HAW. J. L. & POL. 241 (Summer 2004).

someone within the Legal Department. I told her that we will be in Washington, D.C., until close of business on Friday, and she assured me that she will give me a call on my cellular phone at (808) 383-6100 by the close of business that day with a status report.

At 4:45 p.m., Ms. Lattimore contacted myself by phone and stated that the package had been sent to yourself as the Assistant Legal Adviser for United Nations Affairs. She stated that you will be contacting myself on Friday (March 3, 2000), but I could give you a call in the morning if I desired.

Today, at 11:00 a.m., I telephoned you and inquired about the receipt of the package. You had stated that you did not have ample time to critically review the package, but will get to it. I stated that the reason for our visit was the offer by the Respondent Hawaiian Kingdom, by consent of the Claimant, by his attorney, Ms. Ninia Parks, for the United States Government to join in the arbitral proceedings presently instituted under the auspices of the Permanent Court of Arbitration at The Hague, Netherlands. You stated that litigation in the court system is handled by the Justice Department and not the State Department, and that you felt they (Justice Dept.) would be very reluctant to join in the present arbitral proceedings.

I responded by assuring that the State Department should review the package in detail and can get back to the Acting Council of Regency by phone for continued dialogue. I gave you our office's phone number at (808) 239-5347, of which you acknowledged. I assured you that we did not need an immediate answer, but out of international courtesy the offer is still open, notwithstanding arbitral proceedings already in motion. I also advised you that Secretary-General van den Hout of the Permanent Court of Arbitration was aware of our travel to Washington, D.C. and the offer to join in the arbitration. As I stated in our conversation he requested that the dialogue be reduced to writing and filed with the International Bureau of the Permanent Court of Arbitration for the record, and you acknowledged. The conversation then came to a close.

I have taken the liberty of enclosing Hawaiian diplomatic protests lodged by my former countrymen and women in the U.S. Department of State in the summer of 1897, on record at your National Archives, in order for you to understand the gravity of the situation. I have also enclosed two (2) recent protests by myself as an officer of the Hawaiian Government against the State of Hawai'i for instituting unwarranted criminal proceedings against myself and other Hawaiian subjects and a resident of the Hawaiian Islands under the guise of American municipal laws within the territorial dominion of the Hawaiian Kingdom.

If after a thorough investigation into the facts presented to your office, and following zealous deliberations as to the considerations herein offered, the Government of the United States shall resolve to

decline our offer to enter the arbitration as a Party, the present arbitral proceedings shall continue without affect pursuant to the Hague Conventions IV and V, 1907, and the UNCITRAL Rules of arbitration.

With Sentiments of the Highest Regard,
[signed] David Keanu Sai,
Acting Minister of Interior and Agent for the Hawaiian Kingdom

- 9.3. This action would elicit one of two responses that would be crucial to not only the proceedings regarding the continuity of the Hawaiian State, but also to the status of the *acting* government. Firstly, if the United States had legal sovereignty over the Hawaiian Islands, it could demand that the Permanent Court of Arbitration terminate these proceedings citing the Court is intervening in the internal affairs of the United States without its consent.¹⁷⁸ This would have set in motion a separate hearing by the Permanent Court of Arbitration in order to decide upon the claim,¹⁷⁹ where the *acting* government would be able respond. Secondly, if the United States chose not to intervene, this non-action would indicate to the Court that it doesn't have a presumption of sovereignty or "interest of a legal nature" over the Hawaiian Islands, and, therefore, by its *tacit* acquiescence, would also acknowledge the *acting* government as legitimate in its claim to be the government of the Hawaiian Kingdom. In an article published in the *American Journal of International Law*, Bederman and Hilbert state:

"At the center of the PCA proceeding was the argument that Hawaiians never directly relinquished to the United States their claim of inherent sovereignty either as a people or over their national lands, and accordingly that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States' 'unlawful imposition [over him] of [its] municipal laws' through its political subdivision, the State of Hawaii. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international

¹⁷⁸ See Article 62 of the Statute of the International Court of Justice, which provides: "1. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene. 2. It shall be for the Court to decide upon this request." The Permanent Court of Arbitration in the *Larsen case* relied upon decisions of the International Court of Justice to guide them concerning justiciability of third States, to wit, Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and the United States) (1953-1954), East Timor (Portugal v. Australia) (1991-1995), and Certain Phosphate Lands in Nauru (Nauru v. Australia). In the event that the United States chose to intervene to prevent the Larsen case from going further because it had an interest of a legal nature which may be affected by the decision," it is plausible that the Permanent Court of Arbitration would look to Article 62 of the Statute for guidance.

¹⁷⁹ *Id.*

law violations that the United States committed against him.”¹⁸⁰

- 9.4. The *acting* government was notified by the Permanent Court of Arbitration’s Deputy Secretary General Phyllis Hamilton, that the United States notified the Court that they will not join the arbitral proceedings nor intervene, but had requested permission from the arbitral parties to have access to the pleadings and transcripts of the case. Both the *acting* government and the claimant, Lance Larsen, through counsel, consented. The United States was fully aware of the circumstances of the arbitration whereby the dispute was premised upon the continuity of the Hawaiian State, with the *acting* government serving as its organ during a prolonged and illegal occupation by the United States. The United States did not protest nor did it intervene, and therefore under the doctrine of acquiescence, whose primary function is evidential, the United States recognized *de facto* the conditions of the international arbitration and the continuity of the Hawaiian State. In other words, the United States has provided, not only by acquiescence with full knowledge *de facto* recognition of the *acting* government and the continuity of the Hawaiian State during an illegal and prolonged occupation, but also by direct acknowledgment of the *de facto* authority of the *acting* government when it requested permission from the *acting* government to access the arbitration records.
- 9.5. On December 12, 2000, the day after oral hearings were held at the Permanent Court of Arbitration, a meeting took place in Brussels between Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium, and the author, who was Agent, and two Deputy Agents, Peter Umialiloa Sai, *acting* Minister of Foreign Affairs, and Mrs. Kau’i P. Sai-Dudoit, formerly known as Kau’i P. Goodhue, *acting* Minister of Finance, representing the *acting* government in the *Larsen case*.¹⁸¹ Ambassador Bihozagara attended a hearing before the International Court of Justice on December 8, 2000, (*Democratic Republic of the Congo v. Belgium*),¹⁸² where he was made aware of the Hawaiian arbitration case that was also taking place across the hall in the Peace Palace. After inquiring into the case, he called for the meeting and wished to convey that his government was prepared to bring to the attention of the United Nations General Assembly the prolonged occupation of the Hawaiian Kingdom by the United States. In that meeting, the *acting* government decided it could not, in good conscience, accept the offer and place Rwanda in a position of reintroducing Hawaiian State continuity before the United Nations, when Hawai’i’s community, itself, remained ignorant of Hawai’i’s profound legal position as a result of institutionalized indoctrination. The *acting* government thanked Ambassador Bihozagara for his government’s

¹⁸⁰ See Bederman & Hilbert, *supra* note 176, at 928.

¹⁸¹ David Keanu 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 J. L. & SOC. CHALLENGES 69, 130-131 (Fall 2008).

¹⁸² *Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v. Belgium), Provisional Measures, Order of 8 December 2000, I.C.J. Rep. 2000, at 182.

offer, but the timing was premature. The *acting* government conveyed to the Ambassador that it would need to first focus its attention on continued exposure and education regarding the American occupation both in the Islands and abroad. Although the Rwandan government took no action before the United Nations General Assembly, the offer itself, exhibited Rwanda's *de facto* recognition of the *acting* government and the continuity of the Hawaiian State.

- 9.6. The *acting* government also filed a Complaint against the United States of America with the United Nations Security Council on July 5, 2001¹⁸³ and a Protest & Demand with United Nations General Assembly against 173 member States for violations of treaties with the Hawaiian Kingdom on August 12, 2012.¹⁸⁴ Both the Complaint and Protest & Demand were filed pursuant to Article 35(2) of the United Nations Charter, which provides that “A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.” The Complaint was accepted by China, who served as the Security Council's President for the month of July of 2001, and the Protest & Demand was accepted by Qatar, who served as the President of the General Assembly's 66th Session. Following the filing of the Protest & Demand, the *acting* government also submitted its instrument of accession to the Rome Statute with the United Nations Secretary General on December 10, 2012 in New York City,¹⁸⁵ and its instrument of accession to the 1949 Fourth Geneva Convention with the General Secretariat of the Swiss Federal Department of Foreign Affairs in Berne.¹⁸⁶ At no time has any of the 173 States, whose permanent missions received the protest & demand, objected to the *acting* government's claim of treaty violations by the principal States that have treaties with the Hawaiian Kingdom or their successor States that are successors to those treaties. Article 28 of the *Vienna Convention on Succession of States in respect of Treaties*, provides:

“A bilateral treaty which at the date of a succession of States was in force or was being provisionally applied in respect of the territory to which the succession of States relates is considered as applying provisionally between the newly independent State and the other State concerned when: ... (b) by reason of their conduct they are to be considered as having so agreed.”

¹⁸³ The complaint and exhibits can be accessed online at: <http://hawaiiankingdom.org/united-nations.shtml>; see also Dumberry, *supra* note 159, at 671-672.

¹⁸⁴ The protest and demand can be accessed online at: http://hawaiiankingdom.org/pdf/UN_Protest.pdf.

¹⁸⁵ The ICC's instrument of accession can be accessed online at: http://hawaiiankingdom.org/pdf/Inst_Accession.pdf.

¹⁸⁶ The Fourth Geneva Convention's instrument of accession can be accessed online at: http://hawaiiankingdom.org/pdf/GC_Accession.pdf.

All 173 States have been made fully aware of the conditions of the Hawaiian Kingdom and by their silence have agreed, by acquiescence, like the United States, to the continuity of the Hawaiian State, the existence of the treaties with the principal States and their successor States, together with their corresponding duties and obligations, and the *de facto* authority of the *acting* government under those treaties.

- 9.7. The *acting* government, through time, established special prescriptive rights, by virtue of acquiescence and fully informed acknowledgment through action, as against the United States, and later as against other States, with regard to its exercising of governmental control in international affairs as officers *de facto* of the *de jure* government of the Hawaiian Kingdom as it stood in 1893. Furthermore, the *acting* government has based its actions as officers *de facto* on its interpretation of their treaties, to include the 1893 executive agreements—*Lili‘uokalani assignment* and the *Agreement of restoration*, and the corresponding obligations and duties that stem from these treaties and agreements. The United States, as a party to the executive agreements and other treaties with the Hawaiian Kingdom, has not protested against acts taken by the *acting* government on these matters before the Permanent Court of Arbitration, and the United Nations’ Security Council and General Assembly, and, therefore, has acquiesced with full knowledge as to the rights and duties of both the Hawaiian Kingdom and the United States under the agreements, which are treaties.

“Evidence of the subsequent actions of the parties to a treaty may be admissible in order to clarify the meaning of vague or ambiguous terms. Similarly, evidence of the inaction of a party, although not conclusive, may be of considerable probative value. It has been said that ‘[the] primary value of acquiescence is its value as a means of interpretation.’ The failure of one party to a treaty to protest against acts of the other party in which a particular interpretation of the terms of the treaty is clearly asserted affords cogent evidence of the understanding of the parties of their respective rights and obligations under the treaty.”¹⁸⁷

According to Fitzmaurice, special rights, may be built up by a State “leading to the emergence of a usage or customary...right in favour of such State,” and “that the element of consent, that is to say, acquiescence with full knowledge, on the part of other States is not only present, but necessary to the formation of the right.”¹⁸⁸ A State’s special right derives from customary rights and obligations under international law, and MacGibbon explains that as “with all types of customary rules, the process of formation is similar, namely, the assertion of a right, on the one hand, and consent to or acquiescence in that

¹⁸⁷ See MacGibbon, *supra* note 170, at 146.

¹⁸⁸ Sir Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice, 1951-54: General Principles and Sources of Law*, 30 BRIT. Y. B. INT’L L. 68 (1953).

assertion, on the other.”¹⁸⁹ Specifically, the absence of protest on the part of the United States against the *acting* government’s claims as the legitimate government of the Hawaiian Kingdom signified the United States’ acceptance of the validity of such claims, and cannot now deny it. In the *Alaskan Boundary Dispute*, Counsel for the United States, Mr. Taylor, distinguished between “prescription” and “acquiescence.” He argued that the writings of Publicists, which is a source of international law, have “built up alongside of prescription a new doctrine which they called acquiescence, and the great cardinal characteristic of acquiescence is that it does not require any particular length of time to perfect it; it depends in each particular case upon all the circumstances of the case.”¹⁹⁰ Lauterpracht concludes, “The absence of protest may, in addition, in itself become a source of legal right inasmuch as it is related to—or forms a constituent element of—estoppel.”¹⁹¹ Every action taken by the *acting* government under international law has directly challenged the United States claim to sovereignty over the Hawaiian Islands on substantive grounds and it has prevailed. It has, therefore, established a specific legal right, as against the United States, of its claim to be the legitimate government of the Hawaiian Kingdom exercising governmental control outside of the Hawaiian Islands while under an illegal and prolonged occupation. The United States and other States, therefore, are estopped from denying this specific legal right of the *acting* government by its own admission and acceptance of the right.

10. TRANSITIONAL PLAN OF THE ACTING GOVERNMENT

- 10.1. A viable and practical legal strategy to impel compliance must be based on the legal personality of the Hawaiian State first, and from this premise expose the effect that this status has on the national and global economies—*e.g.* illegally assessed taxes, duties, contracts, licensing, real estate transactions, etc. This exposure will no doubt force States to intercede on behalf of their citizenry, but it will also force States to abide by the doctrine of non-recognition qualified by the *Namibia* case and codified in the *Articles of State Responsibility for International Wrongful Acts*. Parties who entered into contracts within the territorial jurisdiction of the Hawaiian Kingdom, cannot rely on United States Courts in the Islands to provide a remedy for breach of simple or sealed contracts, because the courts themselves cannot exercise jurisdiction without a lawful transfer of Hawaiian sovereignty. Therefore, all official acts performed by the provisional government and the Republic of Hawai‘i after the *Lili‘uokalani assignment* and the *Agreement of restoration*; and all actions done by the United States and its surrogates—the Territory of Hawai‘i and the State of Hawai‘i, for and on behalf of the Hawaiian Kingdom

¹⁸⁹ I.C. MacGibbon, *Customary International Law and Acquiescence*, 33 BRIT. Y. B. INT’L L. 115, 117 (1957).

¹⁹⁰ United States Senate, 58th Cong., 2d Sess., Doc. no. 162, *Proceedings of the Alaskan Boundary Tribunal*, vol. vii, 619 (1904).

¹⁹¹ See Lauterpracht, *supra* note 173, at 395.

since the occupation began 12 noon on August 12, 1898, cannot be recognized as legal and valid without violating international law. The only exceptions, according to the *Namibia* case, are the registration of births, deaths and marriages.

- 10.2. A temporary remedy to this incredible quandary, which, no doubt, will create economic ruination for the United States, is for the Commander of the United States Pacific Command to establish a military government and exercise its legislative capacity, under the laws of occupation. By virtue of this authority, the commander of the military government can provisionally legislate and proclaim that all laws having been illegally exercised in the Hawaiian Islands since January 17, 1893 to the present, so long as they are consistent with Hawaiian Kingdom laws and the law of occupation, shall be the provisional laws of the occupier.¹⁹² The military government will also have to reconstitute all State of Hawai'i courts into Article II Courts in order for these contracts to be enforceable, as well as being accessible to private individuals, whether Hawaiian subjects or foreign citizens, in order to file claims in defense of their rights secured to them by Hawaiian law. All Article I Courts, *e.g.* Bankruptcy Court, and Article III courts, *e.g.* Federal District Court, that are currently operating in the Islands are devoid of authority as Congress and the Judicial power have no extraterritorial force, unless they too be converted into Article II Courts. The military government's authority exists under and by virtue of the authority of the President, which is provided under Article II of the United States Constitution.
- 10.3. The military government should also provisionally maintain, by decree, the executive branches of the Federal and State of Hawai'i governments in order to continue services to the community headed by the Mayors of Hawai'i island, Maui, O'ahu and Kaua'i, who should report directly to the commander of the military government. The Pacific Command Commander will replace the function of the State of Hawai'i Governor, and the legislative authority of the military governor would also replace the State of Hawai'i's legislative branch, *i.e.* the State Legislature and County Councils. The Legislative Assembly of the Hawaiian Kingdom can take up the lawfulness of these provisional laws when it reconvenes during the transitional stage of ending the occupation. At that point, it can determine whether or not to enact these laws into Hawaiian statute or replace them altogether with new statutes.¹⁹³
- 10.4. Without having its economic base spiral out of control, the United States is faced with no other alternative but to establish a military government. But another serious reason to establish a military government, aside from the economic factor, is to put an end to war crimes having been committed and are currently being committed against Hawaiian subjects by individuals within the Federal and State of Hawai'i governments. Their willful denial of

¹⁹² See VON GLAHN, *supra* note 116, at 777.

¹⁹³ See FEILCHENFELD, *supra* note 158, at 145.

Hawai‘i’s true status as an occupied State does not excuse them of criminal liability under laws of occupation, but ultimate responsibility, however, does lie with the United States President, Congress and the Supreme Court. “War crimes,” states von Glahn, “played an important part of the deliberations of the Diplomatic Conference at Geneva in 1949. While the attending delegates studiously eschewed the inclusion of the terms ‘war crimes’ and ‘Nuremberg principles’ (apparently regarding the latter as at best representing particular and not general international law), violations of the rules of war had to be, and were, considered.”¹⁹⁴

- 10.5. Article 146 of the Geneva Convention provides that the “High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.” According to Marschik, this article provides that “States have the obligation to suppress conduct contrary to these rules by administrative and penal sanctions.”¹⁹⁵ “Grave breaches” enumerated in Article 147, that are relevant to the occupation of the Hawaiian Islands, include: “unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention...[and] extensive destruction and appropriation of property, not justified by military necessity.”¹⁹⁶ Protected persons “are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”¹⁹⁷ According to United States law, a war crime is “defined as a grave breach in any of the international conventions signed at Geneva August 12, 1949, or any protocol to such convention to which the United States is a party.”¹⁹⁸ Establishing a military government will shore up these blatant abuses of protected persons under one central authority, that has not only the duty, but the obligation, of suppressing conduct contrary to the Hague and Geneva conventions taking place in an occupied State. The United States did ratify both Hague and Geneva Conventions, and is considered one of the “High Contracting Parties.”¹⁹⁹ On July 1, 2002, the International Criminal Court was established after the ratification of 60 States as a permanent, treaty based, independent

¹⁹⁴ See VON GLAHN, *supra* note 116, at 248.

¹⁹⁵ Axel Marschik, *The Politics of Prosecution: European National Approaches to War Crimes*, (Timothy L. H. McCormack and Gerry J. Simpson, ed.s), THE LAW OF WAR CRIMES: NATIONAL AND INTERNATIONAL APPROACHES 72, note 33 (1997).

¹⁹⁶ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949), Article 147.

¹⁹⁷ *Id.*, Article 4.

¹⁹⁸ 18 U.S. Code §2441(c)(1).

¹⁹⁹ Hague Convention No. IV, October 18, 1907, Respecting the Laws and Customs of War on Land, 36 U.S. Stat. 2277; Treaty Series 539; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, Treaties and Other International Acts Series, 3365.

court under the Rome Statute (1998) for the prosecution of individuals, not States, for war crimes.

Thus, the primary objective is to ensure the United States complies with its duties and obligations under international law, through his Commander of the United States Pacific Command, to establish a military government for the administration of Hawaiian Kingdom law. As explained hereinbefore, the United States military does not possess wide discretionary powers in the administration of Hawaiian Kingdom law, as it would otherwise have in the occupation of a State it is at war with. Hence, belligerent rights do not extend over territory of a neutral State, and the occupation of neutral territory for military purposes is an international wrongful act.²⁰⁰ As a result, there exists a continued exploitation of Hawaiian territory for military purposes in willful disregard of the 1893 executive agreements of administering Hawaiian law and then restore the Hawaiian government *de jure*. In a neutral State, the Hague and Geneva conventions merely provide guidance for the establishment of a military government.

11. CONCLUSION

- 11.1. As hereinbefore explained, the continuity of the Hawaiian State is undisputed, and for the past 13 years, the *acting* government has acquired a customary right to represent the Hawaiian State before international bodies by virtue of the doctrine of acquiescence, as well as explicit acknowledgment by States of the government's *de facto* authority. Because the Hawaiian Kingdom was an independent State in the nineteenth century, as acknowledged by the Permanent Court of Arbitration in 2001 by *dictum*,²⁰¹ international law provides for a presumption of the Hawaiian State's continuity, which "may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains."²⁰² Therefore, any United States government agency operating within the territory of the Hawaiian State that was established by the Congress, *i.e.* Federal agencies, the State of Hawai'i, and County governments, is "illegal" because Congressional authority is limited to the territory of the United States.²⁰³
- 11.2. After firmly establishing there is no "valid demonstration of legal title, or sovereignty," on the part of the United States over the Hawaiian Islands, and therefore the Hawaiian State continues to exist, it next became necessary to ascertain the legitimacy of the *acting* government to represent the Hawaiian

²⁰⁰ Hague Convention VI (1907), *Rights and Duties of Neutral States*, Article I.

²⁰¹ *Supra*, para. 3.1. The Court acknowledged: "...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, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."

²⁰² *Supra*, para. 2.6.

²⁰³ *Supra*, para. 3.11.

State before international bodies. The first international body to be accessed by the *acting* government was the Permanent Court of Arbitration in 1999, followed by the United Nations Security Council in 2001, the United Nations General Assembly in 2012, the United Nations Secretary General as the depository for the International Criminal Court in 2012, and the Swiss Government as the depository for the 1949 Geneva Conventions in 2013. Access to these international bodies was accomplished as a State, which is not a member of the United Nations. The *de facto* authority of the *acting* government was acquired through time since the arbitral proceedings were held at the Permanent Court of Arbitration, by acquiescence, in the absence of any protest, and, in some cases, by direct acknowledgment from States, *i.e.* United States, when it requested permission from the *acting* government to access the arbitral records;²⁰⁴ Rwanda, when it provided notice to the *acting* government of its intention to report the prolonged occupation of the Hawaiian Kingdom to the General Assembly;²⁰⁵ China, when it accepted the Complaint as a non-member State of the United Nations from the *acting* government while it served as President of the United Nations Security Council;²⁰⁶ Qatar, when it accepted the Protest and Demand as a non-member State of the United Nations from the *acting* government while it served as President of the General Assembly's 66th Session;²⁰⁷ and Switzerland, when it accepted the Instrument of Accession from the *acting* government as a State while it served as the repository for the 1949 Geneva Conventions.²⁰⁸

- 11.3. The *acting* government, as nationals of an occupied State, took the necessary and extraordinary steps, by necessity and according to the laws of our country and international law, to reestablish the Hawaiian government in an *acting* capacity in order to exercise our country's preeminent right to "self-preservation" that was deprived through fraud and deceit; and for the past 13 years the *acting* government has acquired a customary right under international law in representing the Hawaiian State during this prolonged and illegal occupation.



David Keanu Sai, Ph.D.

²⁰⁴ *Supra*, para. 9.4.

²⁰⁵ *Supra*, para. 9.5.

²⁰⁶ *Supra*, para. 9.6.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

Attachment “G”

**LAW OFFICE OF
DEXTER K. KAIAMA**

111 Hekili Street, Suite A1607
Kailua, Hawai'i 96734

Tel. No. (808) 284-5675

February 18, 2013

International Criminal Court
Office of the Prosecutor
Communications
Post Office Box 19519
2500 CM The Hague
The Netherlands.

Re: WAR CRIME COMPLAINT

Perpetrators: Circuit Court Judge GREG K. NAKAMURA; Plaintiff
DEUTSCHE BANK NATIONAL TRUST COMPANY; and Plaintiff's attorneys
CHARLES R. PRATHER, ESQ., and SOFIA M. HIROSONAE, ESQ.

Victim: KALE KEPEKAIO GUMAPAC

Madam Prosecutor:

This communication and complaint is provided to the office of the Prosecutor pursuant to the Hawaiian Kingdom's accession to the International Criminal Court's Rome Statute deposited with the Secretary-General of the United Nations on December 10, 2012, and the Hawaiian Kingdom's accession to the 1949 fourth Geneva Convention deposited with the Swiss Federal Council on January 14, 2013. Article 2, fourth Geneva Convention, provides: "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."

Pursuant to the Rome Statute's Article 8—*War crimes*, (1) the court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes. (2) For the purpose of this Statute, "war crimes" means: (a)(vi) willfully depriving a...protected person of the rights of fair and regular trial.

Elements of the war crime of denying a fair trial include:

1. The perpetrator deprived one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, in the third and the fourth Geneva Conventions of 1949.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an [occupation of the territory of a High Contracting Party].
5. The perpetrator was aware of factual circumstances that established the existence of an [occupation of the territory of a High Contracting Party].

With respect to the last two elements listed for the war crime of denying a fair trial:

1. **There is no requirement for a legal evaluation by the perpetrator as to the existence of an [occupation of the territory of a High Contracting Party] or its character as international or non-international;**
2. In that context there is no requirement for awareness by the perpetrator of the facts that established the character of the [occupation of the territory of a High Contracting Party] as international or non-international;
3. **There is only a requirement for the awareness of the factual circumstances that established the existence of an [occupation of the territory of a High Contracting Party] that is implicit in the terms “took place in the context of and was associated with.”**

BACKGROUND

I represent a client who has been deprived of a fair and regular trial in ejectment proceedings in the State of Hawai‘i Circuit Court of the Third Circuit. The Circuit Court

of the Third Circuit is a United States court illegally constituted in the territory of the Hawaiian Kingdom.

Unable to procure a treaty of cession from the Hawaiian Kingdom government acquiring the Hawaiian Islands as required by international law, Congress enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War (30 U.S. Stat. 750) as a war measure. Congressional laws have no extraterritorial effect and are confined to United States territory.

The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War. The occupation reinforced and supplied the troops that have been occupying the Spanish colonies of Guam and the Philippines since May 1, 1898. Following the close of the Spanish-American War by the Treaty of Paris signed December 10, 1898 (30 U.S. Stat. 1754), U.S. troops remained in the Hawaiian Islands and continued its occupation to date in violation of international law.

Article 6, 1863 Lieber Code, regulated U.S. troops during the occupation of the Hawaiian Islands in 1898 and mandated the Commander of U.S. troops to administer the laws of the occupied country, being the civil and penal laws of the Hawaiian Kingdom. Article 6 was superseded by Article 43, 1899 Hague Convention, II (32 U.S. Stat. 1803), and then superseded by Article 43, 1907 Hague Convention, IV (36 U.S. Stat. 2227). Article 43 of the 1907 Hague Convention, IV, reinforces the 1893 *Lili'uokalani assignment* that mandates the President to administer the civil and penal laws of the Hawaiian Kingdom. On August 12, 1949, the United States signed and ratified the (IV) *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* of 12 August 1949 (6 U.S.T. 3516, T.I.A.S No. 3365, 75 U.N.T.S. 287). In July 1956, the U.S. Department of the Army published Field Manual 27-10—The Law of Land Warfare. According to the United States Supreme Court:

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“Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens; and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.... [T]he court recognized, and in each of the cases cited [involving the exercise of the sovereign power of the United States] found, the warrant for its conclusion is not in the provisions of the Constitution, but in the law of nations”. United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 318 (1936).

Illegally usurping Hawaiian sovereignty, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai‘i* on April 30, 1900 (31 U.S. Stat. 141); and on March 18, 1959, President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai‘i into the Union* (73 U.S. Stat. 4). These laws not only have no extraterritorial effect, but stand in direct violation of the 1907 Hague Convention, IV, the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV, and international law.

The aforementioned Acts of the U.S. Congress constitute a usurpation of sovereignty during occupation by the United States and is the basis of the court’s exercise of jurisdiction within the territory of the Hawaiian Kingdom. *Id.* Section 12. Without a treaty of cession, whereby the Hawaiian Kingdom transferred the Hawaiian Islands to the United States, this congressional act is a usurpation of Hawaiian sovereignty and therefore a **“war crime”** committed under the heading of **“usurpation of sovereignty during occupation.”**

Since 1898, the United States methodically and pursuant to plan “Americanized” the Hawaiian Islands by denationalizing the occupants of the Hawaiian Kingdom. Through “Americanization” the national character of the Hawaiian Kingdom as an independent and sovereign State was eventually eradicated by assimilating Hawaiian nationals into the United States of America politically, culturally, socially, and

economically. This plan included mass migration of American colonists, economic domination, installation of puppet governments, purported *de jure* annexation, and the installation of military bases throughout the Hawaiian Islands. As “Germanization in occupied territories” during the Second World War was a war crime, being Count III (J) of the Nuremberg Indictment, so is “Americanization.”

Under *An Act To amend title 18, United States Code, to carry out the international obligations of the United States under the Geneva Conventions to provide criminal penalties for certain war crimes* (Public Law 104-192, 104th Congress), members of the United States Armed Forces and United States nationals situated within the territory of the Hawaiian Kingdom are liable to be prosecuted for the commission of war crimes by the United States Pacific Command, being the occupant of the Hawaiian Kingdom. Pursuant Title 18, United States Code, §2441(c)(1), a war crime is any conduct “defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949.” Article 147, Fourth Geneva Convention defines a grave breach, *inter alia*, as “willfully depriving a protected person of the rights of fair and regular trial.” §2441(a) provides “Whoever,...outside of the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.” Subsection (b) provides “The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

Courts illegally constituted in the territory of another sovereign and independent state is an extension of this war crime. See Alwyn V. Freeman, “War Crimes by Enemy Nationals Administering Justice in Occupied Territory,” 41 Am. J. Int’l L. 579-610, 606 (1947); and 15 Law Reports of Trials of War Criminals (United Nations War Crime Commission) 131 (1949). Therefore, by extension, the Circuit Court of the Third Circuit

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cannot be considered lawfully constituted and my client was willfully deprived his right to get a fair and regular trial after presenting clear and convincing evidence that the Hawaiian Kingdom continues to exist as an occupied state.

STATEMENT OF FACTS

My client is KALE KEPEKAIIO GUMAPAC, a Hawaiian national (Exhibit “1”) and “protected person” under the fourth Geneva Convention acceded to by the Hawaiian Kingdom on February 14, 2013, who’s right to a fair trial is protected under Article 147 of the fourth Geneva Convention. Ejectment proceedings on his property were instituted in the Circuit Court of the Third Circuit, Island of Hawai’i (civil no. 11-1-0590), by DEUTSCHE BANK NATIONAL TRUST COMPANY, represented by CHARLES R. PRATHER, ESQ., and SOFIA M. HIROSONAE, ESQ. (Exhibit “2”).

On January 13, 2012, a motion to dismiss was filed by my client providing evidence of the occupation of the Hawaiian Kingdom and that the court was illegally constituted (Exhibit “3”). My client’s motion to dismiss was set for hearing on February 14, 2012 and came before Circuit Court Judge GREG K. NAKAMURA (Exhibit “4”). Judge NAKAMURA denied my client’s motion to dismiss without cause.

In these proceedings Judge NAKAMURA committed a war crime by willfully depriving my client, a protected person, of a fair and regular trial prescribed by the fourth Geneva Convention. The Plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY, represented by CHARLES R. PRATHER, ESQ., and SOFIA M. HIROSONAE, ESQ., were complicit in these proceedings and therefore committed a war crime as accessories.

My client has been deprived of his right to a fair and regular trial by a court that stands in direct violation of the 1899 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law. An appropriate court is a Hawaiian Kingdom court or an Article II U.S. Federal Court, which is a military court established by the

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President through executive order that would administer the civil and penal laws of the Hawaiian Kingdom under the international laws of occupation.

By the pleadings and oral argument in this case, the aforementioned individuals cannot claim they were unaware of the factual circumstances that established the existence of the prolonged and illegal occupation of the Hawaiian Kingdom, and there is no requirement for a legal evaluation by these perpetrators as to the existence of the prolonged and illegal occupation of the Hawaiian Kingdom, only awareness of the factual circumstances.

In the *Trial of Friedrich Flick and Five Others, United States Military Tribunal, Nuremberg*, 9 Law Reports of Trials of Law Criminals (United Nations War Crime Commission) 1, 19 (1949), the U.S. Military Tribunal stated:

...responsibility of an individual for infractions of international law is not open to question. In dealing with property located outside his own State, he must be expected to ascertain and keep within the applicable law. **Ignorance thereof will not excuse guilt but may mitigate punishment** (emphasis added).

Pursuant to Article 17 of the Rome Statute, the case is not being investigated or prosecuted by a State, which has jurisdiction over it; the case has not been investigated by a State, which has jurisdiction over it and has decided not to prosecute the persons concerned; and the persons concerned have not already been tried for conduct which is the subject of the complaint. Therefore, due to the unavailability of the Hawaiian Kingdom's national judicial system or a military government established under the laws of occupation by the United States, my client is unable protect his rights as a protected person or to seek redress.

Accordingly, pursuant to Article 17(3) of the Rome Statute, I respectfully request the office of the Prosecutor, with all due speed, investigate the situation in order to

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determine if the alleged perpetrators should be charged with the war crime specified above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dexter K. Kaiama', with a long horizontal flourish extending to the right.

Dexter K. Kaiama, Esq.

enclosures

cc: Office of the United Nations High Commissioner for Human Rights
Human Rights Council Branch-Complaint Procedure Unit
OHCHR- Palais Wilson
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland

Exhibit “1”

1a. Child's First Name Kale Charles		1b. Middle Name Kepekaio Celestino		1c. Last Name Gumapac, Jr.	
2. Sex Male	3. Single, Twin, Triplet Single	4. If Twin, Triplet—Born 1st, 2nd, 3rd	5a. Birth Date February 5, 1951	5b. Month Day Year JAN - 7 1954	5c. Hour 7:19P. M.
6a. Place of Birth, City or Town (If outside city or town limits write Rural and give judicial district) Honolulu			6b. County Honolulu		6c. State T. H.
7a. Name of Hospital or Institution (If not in hospital or institution, give street address or location) Queen's Hospital			7b. LI Gov. Order of: 11-10-1943		
8a. Residence of Mother, City or Town (If outside city or town limits write Rural and give judicial district) Honolulu		8b. County Honolulu		8c. State T. H.	
9a. Street Address (If rural give location) 1048 B.C. Kinau Street		9b. Mother's Mailing Address if Different From Usual Residence 1048 B.C. Kinau Street			
10. Full Name of Father Charles Celestino Gumapac			11. Race of Father Part Hawaiian 2		
12. Age of Father 25	13. Birthplace, State or Foreign Country T. H.	14. Usual Occupation Machinist		15. Kind of Business or Industry U.S. Navy Yard	
16. Full Maiden Name of Mother Flora Kalama Kepekaio			17. Race of Mother Part Hawaiian 2		
18. Birthplace of Mother, State or Foreign Country T. H.			19. Age of Mother 29		
20. I certify that the above stated information is true and correct to the best of my knowledge.		21. Signature of Parent or Other Informant <i>Flora K. Gumapac</i>		22. Parent <input checked="" type="checkbox"/> Other <input type="checkbox"/>	
23. I hereby certify that this child was born alive on the date and hour stated above.		24. Signature of Attendant <i>Wm. G. Major, M.D.</i>		25. M.D. <input checked="" type="checkbox"/> Midwife <input type="checkbox"/> Other <input type="checkbox"/>	
26. Date Accepted by Loc. Reg. FEB - 9 1951		27. Signature of Local Registrar <i>L. H. King</i>		28. Date Accepted by Gen. Gen. FEB - 9 1951	

Exhibit “2”

FILED

RCO HAWAII, LLLC
A Hawaii Limited Liability Law Company

2011 DEC 15 PM 3:39

CHARLES R. PRATHER #7664
SOFIA M. HIROSANE #9299
900 Fort Street Mall, Suite 800
Honolulu, Hawaii 96813
Telephone: (808) 532-0090
Fax: (808) 524-0092

L. CHINEN, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

Attorneys for Plaintiff

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE IN TRUST FOR THE
BENEFIT OF THE CERTIFICATEHOLDERS FOR ARGENT SECURITIES INC., ASSET-
BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-W2

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE IN TRUST FOR
THE BENEFIT OF THE
CERTIFICATEHOLDERS FOR ARGENT
SECURITIES INC., ASSET-BACKED
PASS-THROUGH CERTIFICATES,
SERIES 2006-W2,

Plaintiff,

vs.

DIANNE DEE GUMAPAC; KALE
KEPEKAIO GUMAPAC; JOHN DOES 1-
50; AND JANE DOE 1-50

Defendants.

CIVIL NO. 11-1 -0590

(Other Civil Action)

(Hilo)

COMPLAINT FOR EJECTMENT;
EXHIBITS "A" - "B"; SUMMONS

COMPLAINT FOR EJECTMENT

Comes now Plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY, AS
TRUSTEE IN TRUST FOR THE BENEFIT OF THE CERTIFICATEHOLDERS FOR
ARGENT SECURITIES INC., ASSET-BACKED PASS-THROUGH CERTIFICATES,

I hereby certify that this is a full, true and correct
copy of the original on file in this office.



Clerk, Third Circuit Court, State of Hawaii

SERIES 2006-W2 (“Plaintiff”), by and through its attorneys RCO Hawaii, LLLC, for cause of action against the above-named defendant, avers and alleges as follows:

1. This Court has jurisdiction over this matter pursuant to § 604-5 of the Hawaii Revised Statutes (“HRS”), as amended, and venue is proper.

2. Plaintiff is the fee simple owner of the property (“Property”) located at 15-1716 2nd Avenue, Keaau, Hawaii, 96749, and is entitled to the possession thereof by virtue of a non-judicial foreclosure sale held on January 31, 2011, and the subsequent recording on February 3, 2011 of a Quitclaim Deed (“Deed”) in the Office of the Assistant Registrar of the Land Court for the State of Hawaii as Document No. 4046268 and noted on Transfer Certificate of Title No. 1,012,360. A true and correct copy of the Deed is attached as Exhibit “A” and incorporated by this reference.

3. The Property is located within the jurisdiction of this Court.

4. Defendants DIANNE DEE GUMAPAC and KALE KEPEKAIO GUMAPAC (“Defendants”), or occupants on their behalf, are occupying the Property without consent or permission of Plaintiff, and are wrongfully and unlawfully occupying, and withholding possession of said Property against the rights of Plaintiff.

5. That Plaintiff’s counsel mailed written notice to Defendant(s) to vacate said Property on January 25, 2011, and to vacate the Property within 10 days. A true and correct copy of this written notice is attached hereto as Exhibit “B”.

6. That notwithstanding said notice, Defendants are still in possession of the Property.

7. That Plaintiff is entitled to immediate possession of the Property under HRS § 604-5.

WHEREFORE, Plaintiff prays as follows:

- A. That Judgment for Possession be entered giving Plaintiff exclusive possession of the Property.
- B. That a Writ of Possession issue forthwith directing the Sheriff or Police Officer to:
 - 1. Remove Defendants from the Property and all persons possessing the property through Defendants;
 - 2. Remove from the Property all personal property; and
 - 3. Put Plaintiff in possession of the Property.
- C. That Plaintiff be awarded Court costs, interest, reasonable attorney's fees, and any and all other damages or charges arising out of the Defendants' unlawful occupancy of the Property and that a monetary Judgment for the total amount awarded be entered against Defendants and in the case of more than one Defendant, Judgment be entered jointly and severally against all Defendants.
- D. Such further and other relief the as Court shall deem just and proper.

DATED: Honolulu, Hawaii, December 13, 2011.



CHARLES R. PRATHER
SOFIA M. HIROSANE

Attorneys for Plaintiff
DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE IN TRUST
FOR THE BENEFIT OF THE
CERTIFICATEHOLDERS FOR ARGENT
SECURITIES INC., ASSET-BACKED
PASS-THROUGH CERTIFICATES,
SERIES 2006-W2

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE IN TRUST FOR
THE BENEFIT OF THE
CERTIFICATEHOLDERS FOR ARGENT
SECURITIES INC., ASSET-BACKED
PASS-THROUGH CERTIFICATES,
SERIES 2006-W2,

Plaintiff,

vs.

DIANNE DEE GUMAPAC; JOHN DOES 1-
50; AND JANE DOE 1-50

Defendants.

CIVIL NO. _____
(Other Civil Action)
(Hilo)

SUMMONS

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to file with the court and serve upon Charles R. Prather, Esq. or Sofia M. Hirosane, of RCO HAWAII, LLLC, Plaintiff's Attorneys, whose address is 900 Fort Street Mall, Suite 800, Honolulu, Hawaii 96813, an answer to the Complaint for Ejectment which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint for Ejectment.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Hilo, Hawaii, DEC 15 2011

LORNA K. CHIMEN (SEAL)
CLERK OF THE ABOVE-ENTITLED COURT

Exhibit “3”

KALE KEPEKAIO GUMAPAC
HC2 BOX 9607
Keaau, HI 96749
Phone no. (808) 896-7420

Filed Jan. 13, 2012
4:09 pm

DEFENDANT
Pro se

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

DEUTSCHE BANK NATIONAL TRUST	)	CIVIL NO. 11-1-0590
COMPANY, AS TRUSTEE IN TRUST FOR THE)	
BENEFIT OF THE CERTIFICATE HOLDERS)	
FOR ARGENT SECURITIES INC., ASSET-	)	DEFENDANT KALE KEPEKAIO
BACKED PASS-THROUGH CERTIFICATES,	)	GUMAPAC'S MOTION TO DISMISS
SERIES 2006-W2,	)	COMPLAINT PURSUANT TO HRCP
	)	12(B)(1); MEMORANDUM IN
Plaintiff,	)	SUPPORT OF MOTION TO DISMISS;
	)	DECLARATION OF DEFENDANT;
vs.	)	EXHIBITS "A-C"; NOTICE OF
	)	HEARING; CERTIFICATE OF
DIANNE DEE GUMAPAC; KALE KEPEKAIO	)	SERVICE
GUMAPAC; JOHN DOES 1-50; AND JANE)	
DOES 1-50,)	
	)	<u>HEARING:</u>
Defendants.)	
	)	DATE: <u>Feb. 14</u> , 2012
	)	TIME: <u>8:00 am</u>
	)	JUDGE: <u>Greg K. Nakamura</u>
)	

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

COMES NOW the Defendant KALE KEPEKAIO GUMAPAC, 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 motions 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 these motions 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: Keaau, Hawai'i, January 13, 2012.

KALE KEPEKAIO GUMAPAC
Defendant, pro se

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DEUTSCHE BANK NATIONAL TRUST	)	CIVIL NO. 11-1-0590
COMPANY, AS TRUSTEE IN TRUST FOR)	
THE BENEFIT OF THE CERTIFICATE)	
HOLDERS FOR ARGENT SECURITIES INC.,	)	MEMORANDUM IN SUPPORT OF
ASSET-BACKED PASS-THROUGH	)	MOTION TO DISMISS
CERTIFICATES, SERIES 2006-W2,)	
)	
Plaintiff,)	
)	
vs.)	
)	
DIANNE DEE GUMAPAC; KALE KEPEKAIO)	
GUMAPAC; JOHN DOES 1-50; AND JANE)	
DOES 1-50,)	
)	
Defendants.)	
_____)	

MEMORANDUM IN SUPPORT OF MOTION

I. NATURE OF THE PROCEEDING

Plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY (hereafter "PLAINTIFF") filed a complaint in the Circuit Court of the Third Circuit against Defendant KALE KEPEKAIO GUMAPAC (hereafter "DEFENDANT") for ejectment. DEFENDANT asserts that he is obligated to abide by the laws of the Hawaiian Kingdom, a sovereign and independent State, and so is PLAINTIFF. §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. (emphasis added)

The PLAINTIFF cannot claim relief from the Circuit Court of the Third Circuit of the State of Hawai'i because it lacks subject matter jurisdiction. An appropriate Court with subject matter jurisdiction are Courts of the Hawaiian Kingdom, not the State of Hawai'i. The Compiled Laws of the Hawaiian Kingdom (1884) provides:

§870. The Kingdom shall be divided into four judicial circuits, as at present constituted, that is to say:... The third circuit shall consist of the Island of Hawaii, whose seat of justice shall be at Hilo and Waimea.

§880. The respective Circuit Courts shall...**also have power to partition real estate; to grant writs of ejectment and of possession.**

However, in light of the illegal overthrow of the Hawaiian Kingdom government by the United States and its failure to administer Hawaiian Kingdom law and restore the Hawaiian Kingdom government pursuant to two sole executive agreements entered into between President Cleveland and Queen Lili‘uokalani as are more fully explained hereafter, 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). 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," Mercer Law Review* 44 (1992-1993): 825-879, 826. According to *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), military tribunals “are generally based upon the occupant’s customary and conventional duty to govern occupied territory and to maintain law and order.”²

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

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 the these States.

² *See 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. Noguerras*, 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).

upon the Prosecution, 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.*

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 “1” of Defendant’s Declaration) of executive power and the *Agreement of restoration* (Exhibit “B” of Expert Memorandum of Dr. David Keanu Sai, Exhibit “1” of Defendant’s Declaration). 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.”

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), that provides the legal and factual "basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature." *See Lorenzo*, at 221. The State of Hawai'i's claim to territorial jurisdiction under HRS 701-106(1)(a) 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.

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. U.S. constitution, article VI, clause 2, 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." The Supreme Court in *Belmont* stated that no state policy can be found to legally supersede an executive agreement between the federal government and a foreign country. The external powers of the U.S. government could be exercised without regard to State laws. The *Lili'uokalani assignment* and the *Agreement of restoration*, being executive agreements, remains binding today upon the current President as the successor in office to President Grover Cleveland. Should the Court exercise subject matter jurisdiction it would stand in direct violation of Federal law, in particular, the *Supremacy clause*.

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

In *State of Hawai'i v. Lee*, 90 Haw. 130, 142; 976 P.2d 444, 456 (1999), the ICA 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 on determining whether or not the Hawaiian Kingdom continues to exist as a state. See Lorenzo and Baker. In Lorenzo, the ICA correctly cited attributes of a state's sovereign nature 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." See 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 (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." (49 U.S. Stat. 3097, 3100).

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. As a result of the United States' recognition, the Hawaiian Kingdom entered extensive treaty and diplomatic relations with other states, to include the United States of America.

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, 119 ILR 566, 581 (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." The 9th Circuit Court, in Kahawaiola`a v. Norton, 386 F.3rd 1271 (2004), also acknowledged the Hawaiian Kingdom's status as "a co-equal sovereign alongside the United States;" and in Doe v. Kamehameha, 416 F.3d 1025, 1048 (2005), the Court stated that, "in 1866, the Hawaiian Islands were still a sovereign kingdom."

Having established the Hawaiian Kingdom's internationally recognized status as an independent state in the 19th century, which met the standard of a state's sovereign nature referred to in Lorenzo, 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.” See Crawford, The Creation of States in International Law 700 (2nd ed., 2006). 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.” *Id.*, 701. Professor Wright, a renowned scholar in U.S. foreign relations law, states that, “international law distinguishes between a government and the state it governs.” See Wright, The Status of Germany and the Peace Proclamation, 46(2) *American Journal of International Law* 299-308, 307 (April 1952). And 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;” (Restatement (Third) Foreign Relations Law of the United States, Reporter’s Note 2, §201) and “Military occupation, whether during war or after an armistice, does not terminate statehood.” *Id.*, Reporter’s Note 3. 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, See Hudson, Afghanistan, Equador, and the Soviet Union in the League of Nations, 29 *American Journal of International Law* 109-116, 110 (1935), and the latter since 1932, See Hudson, The Admission of Iraq to Membership in the League of Nations, 27 *American Journal of International Law* 133-138, 133 (1933). 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. See Dixon, Textbook on International Law 119 (6th ed., 2007).

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” of Expert Memorandum of Dr. David Keanu Sai, Exhibit “3” of Dr. Sai’s Declaration, attached as Exhibit “1” of Defendant’s Declaration), 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” of Expert Memorandum of Dr. David Keanu Sai, Exhibit “3” of Dr. Sai’s Declaration, attached as Exhibit “1” of Defendant’s Declaration), obligated the President of the United States to restore the Hawaiian government as it was prior to the landing of U.S. troops on January 16, 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.

In Belmont, 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. In Garamendi, at 397, 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.” 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.”

In Belmont, the Court concluded that under no circumstances could a state policy be found to legally supersede an agreement between the national government and a sovereign foreign power. The external powers of the U.S. government could be exercised without regard to state laws. The Court also stated, “Plainly, the external powers of the United States are to be exercised without regard to state laws or policies,” see Belmont, at 330, and “[i]n respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear. As to such purposes, the State of New York does not exist.” Id. In Pink, at 230, 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.”

Both Belmont and Pink were reinforced by Garamendi, at 396, where the Court reiterated, that “valid executive agreements are fit to preempt state law, just as treaties are,” and that the preemptive power of an executive agreement derives from “the Constitution’s allocation of the foreign relations power to the National Government.” All three cases affirm that the *Lili`uokalani Assignment* and the *Agreement of restoration* preempts all laws and policies of the State of Hawai`i. In Edgar v. Mite Corporation, 457 U.S. 624, 631 (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.’”

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 13, 1894, apprised the Congress of the *Restoration agreement* with Queen Lili`uokalani, both the House of Representatives³ and Senate⁴ 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,

³ 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)).

⁴ 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)).

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).

On May 4, 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 17, 1998. Representative Thomas H. Ball (D-Texas) stated on June 15, 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 deliberate attempt to do unlawfully that which can not be done lawfully. (55 Cong. 2nd Sess., 5975 (1898)) (Exhibit “C” of Expert Memorandum of Dr. David Keanu Sai, Exhibit “3” of Dr. Sai’s Declaration, attached as Exhibit “1” of Defendant’s Declaration).

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 20, 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.

...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.

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. (Exhibit "D" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "3" of Dr. Sai's Declaration, attached as Exhibit "1" of Defendant's Declaration).

Notwithstanding the constitutional objections, the Senate passed the resolution on July 6, 1898, and President McKinley signed the joint resolution into law on July 7, 1898. Since 1900, the United States Congress has enacted additional legislation establishing a government in 1900 for the Territory of Hawai'i (31 U.S. Stat. 141), and in 1959 transformed the Territory of Hawai'i into the State of Hawai'i (73 U.S. Stat. 4). According to Born, "American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction." See Born, International Civil Litigation in United States Courts 493 (3rd ed. 1996). In Rose v. Himely, 8 U.S. 241, 279 (1807), the Court illustrated this view by asserting, "that the legislation of every country is territorial." In The Apollon, 22 U.S. 362, 370 (1824), 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," Id., and in U.S. v. Belmont, 301 U.S. 324, 332 (1937), 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." See Kmiec, Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea, 12 Op. Off. Legal Counsel 238-263, 252 (1988).

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. §207(a), 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 responsibilities and functions of government, or of any constitutional or other internal rules or limitations.” And §115(b), 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 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 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*, (see United Nations, Responsibility of States for Internationally Wrongful Acts (2001), Article 12), 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.” *Id.*, Article 14(2). 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.” See Wright, The Control of American Foreign Relations 235 (1922). More importantly, the U.S. “may not rely on the provisions of its internal law as justification for failure to comply with its obligation.” See Responsibility of States, Article 31(1).

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:

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. 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).

In Belmont, Pink, and Garamendi, the Court gave effect to the express terms of an executive agreement that extinguishes all underlying claims of relief sought under State law. The *Lili'uokalani assignment* mandates the President to administer Hawaiian Kingdom law until the Hawaiian Kingdom government can be restored as mandated by the *Agreement of restoration*. Instead, the State of Hawai'i was established by an Act of Congress in 1959, which is an encroachment on the executive power of the President, and the recognized principle of the "exclusive power of the President as the sole organ of the federal government in the field of international relations," See United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936).

The *Lili'uokalani assignment* and the *Agreement of restoration* are Federal matters under the exclusive authority of the President by virtue of Article II of the U.S. Constitution. This court cannot exercise subject matter jurisdiction without violating *Supremacy clause*, notwithstanding the general principle that there is a presumption that State courts possess concurrent jurisdiction with Federal courts over Federal matters. In Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 478 (1981), the Court stated, "the presumption of concurrent jurisdiction can be rebutted by...a clear incompatibility between state court jurisdiction and federal interests." The *Lili'uokalani assignment* and the *Agreement of restoration* divests this Court from exercising subject matter jurisdiction over matters being exclusively Federal because the 1893 Executive Agreements binds the Federal government to administer Hawaiian Kingdom law and to restore the Hawaiian Kingdom government, notwithstanding a century long of non-compliance. Therefore, the *Lili'uokalani assignment* and the *Agreement of restoration*, being executive agreements, expressly precludes this Court from exercising subject matter jurisdiction within the territorial dominion of the Hawaiian Kingdom, and consequently the presumption of concurrent jurisdiction over Federal matters is rebuttable because of a "clear incompatibility between state court jurisdiction and federal interests." See Id.

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, Lance 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. See Bederman, David, & Hilbert, Kurt, “Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii” *American Journal of International Law* 95 (2001): 927; Dumberry, Patrick, “The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom’s Claim to Continue as an Independent State under International Law,” *Chinese Journal of International Law* 2(1)(2002): 65; Sai, David Keanu, “American Occupation of the Hawaiian State: A Century Gone Unchecked,” *Hawaiian Journal of Law and Politics* 1 (Summer 2004): 46; and Sai, David Keanu, “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* 10 (Fall 2008): 165.

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

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.

Exhibits “A,” “B,” “C,” and “D” of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit “1” 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. Exhibit “2” of Declaration of Defendant is a copy “A Study Prepared for the Committee on Foreign Relations United States Senate by the Congressional Research Service Library of Congress” from the United States government printing office, 2001. Exhibit “3” of Declaration of Defendant is a copy from the State of Hawai‘i House of Representatives, Twenty-sixth Legislature, 2011, which is an official government publication. Rule 902 of the Hawai‘i Rules of Evidence states that “**extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to ... (5) Official publications.**” 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.**

In Flagstar Bank v. Kuilipule, civil no. 11-1-0387, this Court has already taken judicial notice of the exhibits herein, and pursuant to Myers v. Cohen, 67 Haw. 389, 688 P.2d 1145 (1984), a circuit court can take judicial notice of pleadings, findings of fact and conclusions of law, and judgments contained in file in another case in the same circuit. 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:

- *Lili‘uokalani assignment*, January 17, 1893, (Exhibit “A” of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit “1” to Declaration of Defendant) 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, Executive Documents on Affairs in Hawaii: 1894-95, (Government Printing Office, 443-464, 1895);
- *Agreement of restoration*, December 18, 1893, (Exhibit “B” of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit “1” to Declaration of Defendant) 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, Executive Documents on Affairs in Hawaii: 1894-95, (Government Printing Office, 1269-1270; 1283-1284, 1895);

- Statements made on the floor of the House of Representatives by Representative Thomas Ball (Exhibit “C” of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit “1” to Declaration of Defendant) are copies from the 55th Cong. 2nd Sess., 5975-5976 (1898);
- Statements made on the floor of the Senate by Senator Augustus Bacon (Exhibit “D” of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit “1” to Declaration of Defendant) are copies from the 55th Cong., 2nd Sess., 6148-6150 (1898).
- “A Study Prepared for the Committee on Foreign Relations United States Senate by the Congressional Research Service Library of Congress” (Exhibit “2” to Declaration of Defendant) from the United States government printing office, 2001.
- House Concurrent Resolution no. 107 (Exhibit “3” to Declaration of Defendant) is a copy from the State of Hawai‘i House of Representatives, Twenty-sixth Legislature, 2011.

VII. CONCLUSION

The *Lili`uokalani assignment* and the *Agreement of restoration*, being executive agreements entered into under the sole authority of the President in foreign relations provides 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,” 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,” as inquired by Judge O’Scannlain in United States v. Lorenzo (1992), and by Judge Heen in Lorenzo (1994). Therefore, this Court should dismiss this case because the Circuit Court of the Third Circuit of the State of Hawai‘i lacks subject matter jurisdiction over matters exclusively Federal, in particular, under the exclusive authority of the current President to faithfully discharge his duties under the 1893 executive agreements, being the successor in office to President Grover Cleveland.

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 under Rule 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: Keaau, Hawai'i, January 13, 2012.

KALE KEPEKAIO GUMAPAC
Defendant, pro se

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DEUTSCHE BANK NATIONAL TRUST	)	CIVIL NO. 11-1-0590
COMPANY, AS TRUSTEE IN TRUST FOR THE)	
BENEFIT OF THE CERTIFICATE HOLDERS)	
FOR ARGENT SECURITIES INC., ASSET-	)	DECLARATION OF KALE
BACKED PASS-THROUGH CERTIFICATES,	)	KEPEKAIO GUMAPAC; EXHIBITS
SERIES 2006-W2,	)	"1-3"
)	
Plaintiff,)	
)	
vs.)	
)	
DIANNE DEE GUMAPAC; KALE KEPEKAIO)	
GUMAPAC; JOHN DOES 1-50; AND JANE)	
DOES 1-50,)	
)	
Defendants.)	
_____)	

DECLARATION OF KALE KEPEKAIO GUMAPAC

I, KALE KEPEKAIO GUMAPAC, do hereby declare as follows:

1. Attached to this Declaration as Exhibit "1" is a true and correct copy of the Declaration of Dr. Keanu Sai and exhibits attached thereto.
2. Attached as Exhibit "2" is a true and correct copy of "A Study Prepared for the Committee on Foreign Relations United States Senate by the Congressional Research Service Library of Congress" (United States government printing office, 2001).
3. Attached as Exhibit "3" is a true and correct copy of House Concurrent Resolution no. 107 (House of Representatives, Twenty-Sixth Legislature, 2011, State of Hawai'i).

I, KALE KEPEKAIO GUMAPAC, DO DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE AND CORRECT.

Dated: Keaau, Hawai'i, January 13, 2012.

KALE KEPEKAIO GUMAPAC
Defendant, pro se

Exhibit “1”

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DEUTSCHE BANK NATIONAL TRUST	)	CIVIL NO. 11-1-0590
COMPANY, AS TRUSTEE IN TRUST FOR)	
THE BENEFIT OF THE CERTIFICATE)	
HOLDERS FOR ARGENT SECURITIES INC.,	)	DECLARATION OF DAVID KEANU
ASSET-BACKED PASS-THROUGH	)	SAI, PH.D.; EXHIBITS "1-5"
CERTIFICATES, SERIES 2006-W2,)	
)	
Plaintiff,)	
)	
vs.)	
)	
DIANNE DEE GUMAPAC; KALE KEPEKAIO)	
GUMAPAC; JOHN DOES 1-50; AND JANE)	
DOES 1-50,)	
)	
Defendants.)	
_____)	

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 (November 28, 2010)."
5. Attached herein as Exhibit "A" of Exhibit "3" is a true and correct copy of the *Lili'uokalani assignment* through exchange of diplomatic notes, 53rd Congress, Executive Documents on Affairs in Hawaii: 1845-95, (Government Printing Office, U.S. State Department, 1895), p. 445-464.

6. Attached herein as Exhibit “B” of Exhibit “3” is a true and correct copy of the *Agreement of restoration* through exchange of diplomatic notes, 53rd Congress, Executive Documents on Affairs in Hawaii: 1845-95, (Government Printing Office, U.S. State Department, 1895), p. 1269-1284.
7. Attached herein as Exhibit “C” of Exhibit “3” is a true and correct copy of statements made on the floor of the House of Representatives by Representative Thomas Ball, 55th Cong. 2nd Sess., 5975-5976 (1898).
8. Attached herein as Exhibit “D” of Exhibit “3” is a true and correct copy of statements made on the floor of the Senate by Senator Augustus Bacon, 55th Cong. 2nd Sess., 6148-6150.
9. I am qualified and competent to testify as an expert witness in matters concerning my “Expert Memorandum on the Legal Continuity of the Hawaiian Kingdom as an Independent and Sovereign State (November 28, 2010)” attached herein as Exhibit “3.”
10. My doctoral dissertation and law reviewed article published in the *Journal of Law and Social Challenges*, (San Francisco School of Law), Vol. 10 (Fall 2008), p. 68-133, centers on two executive agreements entered into between President Grover Cleveland of the United States and Queen Lili‘uokalani of the Hawaiian Kingdom. The first executive agreement was a temporary and conditional assignment of executive power to the President of the United States by Queen Lili‘uokalani under threat of war, and the second executive agreement was an agreement of restoration of the Hawaiian Kingdom government whereby the Queen thereafter would grant amnesty to the insurgents.
11. On January 17, 1893, Queen Lili‘uokalani temporarily and conditionally assigned executive power she was constitutionally vested with under Article 31 of the Hawaiian constitution to the President of the United States under threat of war (attached herein as Exhibit “A” of Exhibit “3”, at 461), to wit:

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 authority which I claim as the constitutional sovereign of the Hawaiian Islands.

12. It wasn't until President Grover Cleveland was inaugurated on March 4, 1893, that the assignment was accepted and a Presidential investigation was initiated to investigate the overthrow of the Hawaiian Kingdom government. The acknowledgment of the assignment was noted in a dispatch of special instructions by Secretary of State Walter Gresham to newly commissioned Minister Plenipotentiary Albert Willis dated October 18, 1893, who was preparing to depart for the Hawaiian Kingdom after the investigation was completed (attached herein as Exhibit "A" of Exhibit "3", Document no. 4, at 463-64), to wit:

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.

13. The Presidential investigation concluded that the Hawaiian government was to be restored, and in the same aforementioned dispatch to Minister Plenipotentiary Willis dated October 18, 1893, Secretary of State Gresham directed Willis (*Id.*, at 464), to wit:

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.

14. After nearly a month of negotiations with U.S. Minister Willis, Queen Lili‘uokalani agreed to the President’s conditions of restoration and on December 18, 1893, she signed the following declaration (attached herein as Exhibit “B” of Exhibit “3”, Document no. 16, at 1269-70), to wit:

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

15. On December 20, 1893, Minister Willis dispatched the signed declaration to the Secretary of State, and in a dispatch to Willis dated January 12, 1893, Gresham acknowledged the Queen’s declaration of acceptance of the conditions (Id., 1283-84), to wit:

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.

...In the mean time, 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.

16. These agreements between the President and the Queen are called sole-executive agreements, and according to the U.S. Supreme Court in *United States v. Belmont*, 301 U. S. 324 (1937), *United States v. Pink*, 315 U.S. 203 (1942), *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003), sole executive agreements do not require ratification by the Senate or approval by Congress to have

the force and effect of a treaty. In *American Insurance Association v. Garamendi*, 539 U.S. 396, 398 (2003), the U.S. Supreme Court stated, “valid executive agreements are fit to preempt state law, just as treaties are.”

17. In *U.S. v. Belmont*, U.S. Attorney Lamar Hardy for Southern District of New York relied on a 1933 sole-executive agreement between President Franklin D. Roosevelt and the Soviet Union’s People’s Commissar for Foreign Relations Maxim M. Litvinov, which is similar in form to the *Lili‘uokalani assignment* and the *Agreement of restoration*. The purpose of the executive agreement was that it was an assignment that released and assigned to the United States all amounts to which the Soviet Government was entitled to within the United States as the successor to former governments of Russia.
18. Attached herein as Exhibit “4” is a true and correct copy of the amended Complaint (excepting Exhibits “1”, “2”, “4”, “5” and “6”), filed by United States Attorney Lamar Hardy in the United States District Court for the Southern District of New York on April 3, 1936. The amended Complaint has a transcription of the sole-executive agreement identified as Exhibit “3.” The transcription of the agreement is from the government publication of *Foreign Relations of the United States, Diplomatic Papers, The Soviet Union: 1933-1939*, (Government Printing Office, 1952), p. 35-36, published under the Seal of U.S. Department of State.
19. Attached herein as Exhibit “5” is a true and correct copy of the U.S.-Soviet sole-executive agreement from the government publication of *Foreign Relations of the United States, Diplomatic Papers, The Soviet Union: 1933-1939*, (Government Printing Office, 1952), p. 35-36.
20. In similar fashion, the *Lili‘uokalani assignment* and the *Agreement of restoration*, being sole-executive agreements as well, are also from the government publication of *Foreign Relations of the United States*. In both cases, the Hawaiian and Soviet executive agreements are published under the Seal of U.S. Department of State, and as such these copies are self-authenticating pursuant to Rule 902(5) of the Hawai‘i Rules of Evidence.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND
CORRECT.

DATED: Kane'ohē, O'ahu, Hawai'i, January 13, 2012.

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

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 Hānoa

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

Viggo D. Hinman
Chancellor

Allan R. London
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
Kane'ohe, HI 96744
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, Kona, 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>.

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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.

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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 to 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

M E S S A G E .

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 on 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:

CONTAINING

THE PROCEEDINGS AND DEBATES

OF THE

FIFTY-FIFTH CONGRESS, SECOND SESSION.

VOLUME XXXI.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1898.

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:

CONTAINING

THE PROCEEDINGS AND DEBATES

OF THE

FIFTY-FIFTH CONGRESS, SECOND SESSION.

VOLUME XXXI.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1898.

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 pre-empt 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.

Exhibit "4"

You will please take notice that a copy of which the return is a copy, was this day duly entered in the within entitled action, in the office of the Clerk of the

Dated, N. Y. , 1936

Yours, etc,

L. S. Attorney,
Attorney for Defendants.

To

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs

MORAN BELMONT and ELLIOTT R. BELMONT as Executors of the last will and Testament of August Belmont Defendants.

AMENDED COMPLAINT

Attorney for

LAMAR BARDY

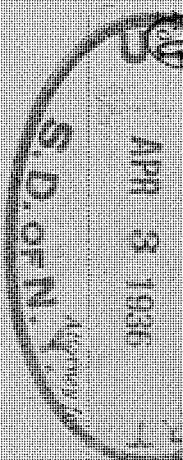
United States Attorney,
Attorney for **PLAINTIFF**.

Service of a copy of the within is hereby admitted.

New York, April 2, 1936

LEONARD S. SHAWMAN & TITEL

Attorneys



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 :
 UNITED STATES OF AMERICA :
 :
 Plaintiff, :
 :
 -against- :
 :
 MORGAN BELMONT and ELEANOR R. :
 BELMONT, as Executors of the :
 Last Will and Testament of :
 August Belmont, deceased, :
 :
 Defendants :
 :
 ----- X

AMENDED COMPLAINT
Law 63/274

The plaintiff, United States of America, by its attorney, HARAR HARDY, United States Attorney for the Southern District of New York, for its complaint herein, alleges on information and belief:

I. The United States of America, hereinafter called the plaintiff, is a corporation sovereign and body politic.

II. Morgan Belmont and Eleanor R. Belmont, the executors of the last will and testament of August Belmont, deceased, hereinafter called the defendants, are residents of the State of New York and of the Southern District of New York.

III. Kompania Petrogradskago Metallicheskago Zavoda, sometimes styled in the German language "Petrograder Metal Fabrik" and sometimes styled in the English language "Petrograd Metal Works", hereinafter called the Metal Company, was prior to 1918 a corporation organized and existing under the laws of Russia with a fixed capital in excess of 1,000,000 rubles, which conducted a metallurgical and metal manufacturing business enterprise in Russia.

IV. Prior to 1918 and up to the date of his death, on or about December 10, 1924, August Belmont was a general partner in a partnership conducting a private banking and investment business in the City of New York under the firm name and style of August Belmont & Co., hereinafter called the Belmont firm.

V. Prior to 1918, the Metal Company had on deposit with the Belmont firm certain sums of money which remained on deposit with the Belmont firm thereafter and the amount of such sums on deposit on December 10, 1924 was \$25,438.48, for the repayment of which no demand had been made prior to that date. The defendants' testator was jointly liable together with the other partners of the Belmont firm for the repayment of these sums.

VI. In 1918 or thereabouts, duly enacted laws, decrees, enactments and orders of the Russian State, including the decree of June 28, 1918, on the nationalization of the largest industrial enterprises, a certified photostatic copy of which is annexed hereto, marked Exhibit 1 and made a part hereof as if set forth in full herein, and a certified copy of a translation of which is annexed hereto, marked Exhibit 2 and made a part hereof as if set forth in full herein, dissolved, terminated and liquidated certain Russian corporations and organizations and nationalized and appropriated the assets of such corporations.

VII. The Metal Company which prior to 1918, as hereinbefore alleged, was a corporation organized and existing under the laws of the State of Russia, with a fixed capital in excess of 1,000,000 rubles, by said duly enacted laws, decrees, enactments and orders of the Russian state, including the said decree of June 28, 1918

alleged in paragraph VI of this amended complaint, was dissolved, terminated and liquidated, and all of its property and assets of every kind and wherever situated, including the aforesaid cash deposit account with the Belmont firm in New York were nationalized and appropriated.

VIII. As a result of said duly enacted laws, decrees, enactments, and orders of the Russian State, the cash deposit account formerly standing to the credit of the Metal Company with the Belmont firm became the property of the Russian State, and remained the property of the Russian State at all times up to November 16, 1933.

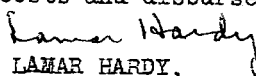
IX. After the death of the aforesaid August Belmont, and on or about December 29, 1924, the Surrogate's Court of Nassau County issued letters testamentary to Morgan Belmont and Eleanor R. Belmont, the defendants herein, as executors of the last will and testament of August Belmont, deceased. Said defendants duly entered upon the performance of their duties as such executors, and have continued in the performance of such duties up to the present time.

X. On or about November 16, 1933, by an executive agreement contained in an exchange of diplomatic correspondence, a copy of which is annexed hereto as Exhibit 3 and made a part hereof as if set forth in full herein, the Union of Soviet Socialist Republics released and assigned to the plaintiff herein all amounts admitted to be due or that may be found to be due to the Union of Soviet Socialist Republics from American nationals. The said executive agreement released and assigned to the plaintiff the aforementioned cash deposit account formerly standing to the credit of the Metal Company with the Belmont firm and since November 16, 1933 plaintiff has been and now is the sole and exclusive owner entitled to

immediate possession of the aforesaid cash deposit account. A letter from the Attorney General of the United States, dated September 17, 1934, a reply thereto by the Secretary of State, and a letter from the Acting Secretary of State to the Attorney General, dated October 27, 1934, all of which are annexed as Exhibits 4, 5 and 6, and made a part hereof as if set forth in full herein, disclose the purpose of the executive agreement and assignment of November 16, 1933 to assign and release to the plaintiff all amounts and assets in the United States formerly owned by the Union of Soviet Socialist Republics, including the aforesaid cash deposit account formerly standing to the credit of the Metal Company with the Belmont firm.

XI. On or about June 18, 1935, the plaintiff demanded from the defendants the payment to the plaintiff of the sum of \$25,438.48, formerly standing to the credit of the Metal Company with the Belmont firm. The defendants have failed to comply with this demand up to the present time.

WHEREFORE, the plaintiff demands judgment against the defendants herein for the sum of \$25,438.48, with interest at 6% from June 18, 1935 to the date of judgment, together with the costs and disbursements of this action.


LAMAR HARDY,
United States Attorney,
Southern District of New York,
Attorney for Plaintiff,
Office and Post Office Address:
United States Court House,
Foley Square,
Borough of Manhattan,
City of New York.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:
SOUTHERN DISTRICT OF NEW YORK)

EDWARD J. ENNIS, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York, and as such has charge of the above entitled action; that he has read the foregoing amended complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true; that the reason this verification is made by him and not by the plaintiff is that the plaintiff is a corporation sovereign; that the sources of his information and the grounds of his belief are records of this case on file in the office of the United States Attorney for the Southern District of New York.

Sworn to before me this
31st day of March, 1936.

A. Chankalian

Edward J. Ennis
Edward J. Ennis

EXHIBIT 3

(Copied from photostat certified by Department of State, on file in office of the United States Attorney.)

Washington,
November 16, 1933.

My dear Mr. President:

Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counterclaims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claims with respect to:

(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof.

I am, my dear Mr. President,

Very sincerely yours,

MAXIM M. LITVINOV,
People's Commissar for Foreign Affairs
Union of Soviet Socialist Republics

Mr. Franklin D. Roosevelt,
President of the United States of America,
The White House.

EXHIBIT 3 Annexed to Complaint

(copied from photostat certified by Department of State, on file in office of the United States Attorney).

THE WHITE HOUSE
Washington

November 16, 1933.

My dear Mr. Litvinov:

I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

"The Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of the their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claim with respect to:

(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or

(b) acts done or settlements made by or with the Government of the United States or public officials in the United States, or its nationals, relating to property, credits or obligations of any Government of Russia or nationals thereof."

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am, my dear Mr. Litvinov,

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

Mr. Maxim M. Litvinov,
People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics."

EXHIBIT 3 Annexed to Complaint.

Exhibit "5"

Foreign Relations
of the
United States
Diplomatic Papers

The Soviet Union
1933-1939



United States
Government Printing Office
Washington : 1952

countries, only in the case of business and production secrets and in the case of the employment of forbidden methods (bribery, theft, fraud, etc.) to obtain such information. The category of business and production secrets naturally includes the official economic plans, in so far as they have not been made public, but not individual reports concerning the production conditions and the general conditions of individual enterprises.

“The Union of Soviet Socialist Republics has also no reason to complicate or hinder the critical examination of its economic organization. It naturally follows from this that every one has the right to talk about economic matters or to receive information about such matters in the Union, in so far as the information for which he has asked or which has been imparted to him is not such as may not, on the basis of special regulations issued by responsible officials or by the appropriate state enterprises, be made known to outsiders. (This principle applies primarily to information concerning economic trends and tendencies.)”

711.61/343%

*The Soviet Commissar for Foreign Affairs (Litvinov) to
President Roosevelt*

WASHINGTON, November 16, 1933.

MY DEAR MR. PRESIDENT: Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claim with respect to:

- (a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Re-

- publics or its nationals may have had or may claim to have an interest; or,
- (b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof.

I am [etc.]

MAXIM LITVINOFF

711.61/343%

*President Roosevelt to the Soviet Commissar for Foreign Affairs
(Litvinov)*

WASHINGTON, November 16, 1933.

MY DEAR MR. LITVINOV: I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

[Here follows quotation of statement made by Mr. Litvinov in his note printed *supra*.]

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am [etc.]

FRANKLIN D. ROOSEVELT

711.61/343%

*The Soviet Commissar for Foreign Affairs (Litvinov) to
President Roosevelt*

WASHINGTON, November 16, 1933.

MY DEAR MR. PRESIDENT: I have the honor to inform you that, following our conversations and following my examination of certain documents of the years 1918 to 1921 relating to the attitude of the American Government toward the expedition into Siberia, the operations there of foreign military forces and the inviolability of the territory of the Union of Soviet Socialist Republics, the Government of the Union of Soviet Socialist Republics agrees that it will waive any and all claims of whatsoever character arising out of activities of military forces of the United States in Siberia, or assistance to military forces in Siberia subsequent to January 1, 1918, and that such claims shall be regarded as finally settled and disposed of by this agreement.

I am [etc.]

MAXIM LITVINOFF

Exhibit “2”

106TH CONGRESS }
2d Session }

COMMITTEE PRINT

{ S. PRT.
106-71 }

**TREATIES AND OTHER INTERNATIONAL
AGREEMENTS: THE ROLE OF THE
UNITED STATES SENATE**

A S T U D Y

PREPARED FOR THE

**COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE**

BY THE

**CONGRESSIONAL RESEARCH SERVICE
LIBRARY OF CONGRESS**



JANUARY 2001

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While the President's authority to conclude such agreements seems well-established, the constitutional doctrine underlying his power is seldom detailed by legal commentators or by the courts. It has been suggested that sufficient authority may be found in the President's duty under Article II, Section 3, of the Constitution to "take care that the laws [i.e., treaty law] be faithfully executed."¹¹⁸ If the making of such agreements is indeed sustainable on this ground, then the instruments technically would seem more properly characterized as Presidential or sole executive agreements in view of the reliance upon one of the Executive's independent powers under Article II of the Constitution.

On the other hand, an alternate legal basis is suggested by *Wilson v. Girard*,¹¹⁹ where the Supreme Court seemed to find sufficient authorization in the Senate's consent to the underlying treaty. The Court's decision was predicated on the following factual chronology. Pursuant to a 1951 bilateral security treaty,¹²⁰ Japan and the United States signed an administrative agreement¹²¹ which became effective on the same date as the security treaty and which was considered by the Senate before consenting to the treaty. The administrative agreement provided that once a NATO Status of Forces Agreement concerning criminal jurisdiction came into effect, the United States and Japan would conclude an agreement with provisions corresponding to those of the NATO Arrangements. Accordingly, subsequent to the entry into force of the NATO Agreement,¹²² the United States and Japan effected a protocol agreement¹²³ containing provisions at issue in the case at bar. In sustaining both the administrative agreement and the protocol agreement, the Court stated that:

In the light of the Senate's ratification of the Security Treaty after consideration of the Administrative Agreement, which had already been signed, and its subsequent ratification of the NATO Agreement, with knowledge of the commitment to Japan under Administrative Agreement, we are satisfied that the approval of Article III of the Security Treaty authorized the making of the Administrative Agreement and the subsequent Protocol embodying the NATO Agreement provisions governing jurisdiction to try criminal offenses.¹²⁴

PRESIDENTIAL OR SOLE EXECUTIVE AGREEMENTS

Agreements concluded exclusively pursuant to the President's independent authority under Article II of the Constitution may be denominated Presidential or sole executive agreements. Unlike congressional-executive agreements or agreements pursuant to

porting authority for 1971 agreement with Portugal under which the United States agreed to provide some \$435 million in credits and assistance to Portugal in exchange for the right to station American forces at Lajes Airbase in the Azores).

¹¹⁸Henkin, pp. 219-220.

¹¹⁹354 U.S. 524 (1957).

¹²⁰Security Treaty Between the United States and Japan, Sept. 8, 1951, 3 U.S.T. 3329, TIAS 2491.

¹²¹Administrative Agreement under the United States-Japan Security Treaty, Feb. 28, 1952, 3 U.S.T. 3341, TIAS 2492.

¹²²Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951, 4 U.S.T. 1792, TIAS 2846.

¹²³Protocol Amending the Administrative Agreement under the United States-Japan Security Treaty, Sept. 29, 1953, 4 U.S.T. 1846, TIAS 2848.

¹²⁴354 U.S. at 528-29.

treaties, Presidential agreements lack an underlying legal basis in the form of a statute or treaty.

Numerous Presidential agreements have been concluded over the years on the basis of the President's independent constitutional authority. Agreements of this type deal with a variety of subjects and reflect varying degrees of formality. Many Presidential agreements, of course, pertain to relatively minor matters and are the subject of little concern. Other agreements, however, have provoked substantial interbranch controversy, notably between the Executive and the Senate.

Some idea of both the modern scope and contentious nature of Presidential agreements may be gained by noting that such agreements were responsible for the open door policy toward China at the beginning of the 20th century,¹²⁵ the effective acknowledgment of Japan's political hegemony in the Far East pursuant to the Taft-Katsura Agreement of 1905 and the Lansing-Ishii Agreement of 1917,¹²⁶ American recognition of the Soviet Union in the Litvinov Agreement of 1933,¹²⁷ the Destroyers-for-Bases Exchange with Great Britain prior to American entry into World War II,¹²⁸ the Yalta Agreement of 1945, a secret portion of which made far-reaching concessions to the Soviet Union to gain Russia's entry into the war against Japan,¹²⁹ the 1973 Vietnam Peace Agreement,¹³⁰ and, more recently, the Iranian Hostage Agreement of 1981.¹³¹

As previously indicated, legal authority supporting the conclusion of Presidential agreements may be found in the various foreign affairs powers of the President under Article II of the Constitution.

¹²⁵ The open door policy in China as initiated during the administration of President McKinley in the form of notes from Secretary of State John Hay to the Governments of France, Germany, Great Britain, Italy, Japan, and Russia. The text of the Hay notes may be found in Malloy, William. *Treaties, Conventions, International Acts, Protocols, and Agreements Between the United States of America and Other Powers*, v. 1, 1910, pp. 244-260 (hereafter cited as Malloy). Concerning the significance of these agreements, see McClure, p. 98, and Bemis, Samuel Flagg. *A Diplomatic History of the United States*. 1965, pp. 486 and 504 (hereafter cited as Bemis).

¹²⁶ The Taft-Katsura Agreement of 1905 may be found in Dennett, Tyler. *Roosevelt and the Russo-Japanese War*. 1925, pp. 112-114. The Lansing-Ishii Agreement of 1917 may be found in Malloy, v. 3, pp. 2720-2722. Concerning the latter agreement, see Bemis, pp. 690-693.

¹²⁷ The correspondence establishing the agreement may be found in U.S. Department of State, *Establishment of Diplomatic Relations with the Union of Soviet Socialist Republics*, Eastern European Series No. 1 (1933) [No. 528]. Concerning President Roosevelt's failure to give the Senate formal notification of the agreement, see the remarks of Senator Vandenberg in *Congressional Record*, January 11, 1934, pp. 460-461.

¹²⁸ See the Agreement Respecting Naval and Air Bases (Hull-Lothian Agreement), *United States-Great Britain*, Sept. 2, 1940, 54 Stat. 2405, and the Opinion of Attorney General Robert Jackson supporting the constitutionality of the arrangement, 39 Op. Atty. Gen. 484 (1940). See also Wright, Q. *The Transfer of Destroyers to Great Britain*. *American Journal of International Law*, v. 34, 1940, p. 680; Borchard, E. *The Attorney General's Opinion on the Exchange of Destroyers for Naval Bases*. *Id.*, p. 690; and Bemis, p. 858.

¹²⁹ For the text of the Yalta Agreement, see 59 Stat. 1823. Seven years after the Yalta Conference, the agreement was still being denounced in the Senate as "shameful," "infamous," and a usurpation of power by the President. *Congressional Record*, February 7, 1952, p. 900 (remarks of Senator Ives). See also Bemis, p. 904. Although there were statements made by President Roosevelt and Secretary of State James Byrnes which seemed to imply that Senate consent to the agreement would be necessary, the treaty mode was not utilized. In this connection, see Pan, *Legal Aspects of the Yalta Agreement*. *American Journal of International Law*, v. 46, 1952, p. 40, and Briggs, *The Leaders' Agreement at Yalta*. *American Journal of International Law*, v. 40, 1946, p. 380.

¹³⁰ See the Agreement on Ending the War and Restoring Peace in Vietnam, January 27, 1973, 24 U.S.T. 1, TIAS 7542, and the supporting case offered by the State Department in Rovine, Arthur. *Digest of United States Practice in International Law 1973*. 1974, p. 188.

¹³¹ See the Declarations of the Government of the Democratic and Popular Republic of Algeria Concerning Commitments and Settlement of Claims by the United States and Iran with Respect to Resolution of the Crisis Arising Out of the Detention of 52 United States Nationals in Iran, with Undertakings and Escrow Agreement, Jan. 19, 1981, TIAS _____, *Department of State Bulletin*, v. 81, February 1981, p. 1.

In a given instance, a specific agreement may be supportable on the basis of one or more of these independent executive powers.

One possible basis for sole executive agreements seem to lie in the President's general "executive power" under Article II, Section 1, of the Constitution. Early judicial recognition of this power in the context of Presidential agreements, and perhaps the earliest judicial enforcement of this mode of agreement-making as well, was accorded by the Supreme Court of the Territory of Washington in *Watts v. United States*.¹³² The agreement at issue was concluded between the United States and Great Britain in 1859 and provided for the joint occupation of San Juan Island pending a final adjustment of the international boundary by the parties.¹³³ The court stated that "[t]he power to make and enforce such a temporary convention respecting its own territory is a necessary incident to every national government, and adheres where the executive power is vested."¹³⁴

The President's executive power was later acknowledged in broad terms in *United States v. Curtiss-Wright Export Corporation*¹³⁵ where the U.S. Supreme Court referred to the "very delicate, plenary, and exclusive power of the President as the sole organ of the federal government in the field of international relations."¹³⁶ Although no agreement was at issue in *Curtiss-Wright*, the quoted language was subsequently applied by the Court in *United States v. Belmont*¹³⁷ to validate the Litvinov Agreement of 1933, supra, wherein the parties settled mutually outstanding claims incident to formal American recognition of the Soviet Union. Concerning this agreement, the Court declared that:

* * * [I]n respect of what was done here, the Executive had authority to speak as the sole organ of the 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 (Art. II, § 2), require the advice and consent of the Senate.¹³⁸

Similarly, in *United States v. Pink*,¹³⁹ the Court again approved the Litvinov Agreement on the ground that "[p]ower to remove such obstacles to full recognition as settlement of claims * * * certainly is a modest implied power of the President who is the 'sole organ of the federal government in the field of international relations.'" ¹⁴⁰ More recently, in *Dames & Moore v. Regan*,¹⁴¹ the Court relied upon, inter alia, the *Pink* case to sustain President Carter's suspension of claims pending in American courts against Iran as

¹³² 1 Wash. Terr. 288 (1870).

¹³³ Joint Occupation of San Juan Island, Exchanges of Notes of Oct. 25 and 29 and Nov. 2, 3, 5, 7, and 9, 1859, and Mar. 20 and 23, 1860, reprinted in Bevens, Charles, *Treaties and Other International Agreements of the United States of America 1776-1949*, v. 12, 1974, p. 123 (hereafter cited as Bevens, *Treaties*).

¹³⁴ 1 Wash. Terr. at 294. As the American correspondence establishing the agreement for the joint occupation of the island was conducted by military officials, the agreement may owe much for its authority to the Commander in Chief Power of the Executive (Article II Section 2 Clause 1). The *Watts* case is further discussed in the text accompanying note 160 infra.

¹³⁵ 299 U.S. 304 (1936).

¹³⁶ *Ibid.* at 320.

¹³⁷ 301 U.S. 324 (1937).

¹³⁸ *Ibid.* at 330.

¹³⁹ 315 U.S. 203 (1942).

¹⁴⁰ *Ibid.* at 229, citing *Curtiss-Wright*, 299 U.S. at 320.

¹⁴¹ 453 U.S. 654 (1981).

required by the Hostage Release Agreement of 1981, *supra*, and, more directly, by Executive order.¹⁴² In light of *Pink*, the Court indicated that “prior cases *** have recognized that the President does have some measure of power to enter into executive agreements without obtaining the advice and consent of the Senate.”¹⁴³ Moreover, the Court’s decision was heavily influenced by a finding the general tenor of existing statutes reflected Congress’ acceptance of a broad scope for independent executive action in the area of international claims settlement agreements.¹⁴⁴

A second Article II power potentially available to the President for purposes for concluding sole executive agreements appears to lie in Article II, Section 2, Clause 1, of the Constitution which provides that the President shall be “Commander-in-Chief of the Army and Navy.” Cautious acceptance of the President’s power to conclude agreements pursuant to this power is reflected in dictum of the Supreme Court in *Tucker v. Alexandroff*¹⁴⁵ where the Court, after noting previous instances in which the Executive unilaterally had granted permission for foreign troops to enter the United States, declared that “[w]hile no act of Congress authorized the Executive Department to permit the introduction of foreign troops, the power to give such permission without legislative assent was probably assumed to exist from the authority of the President as commander in chief of the military and naval forces of the United States.”¹⁴⁶

The treaty clause of the Constitution (Article II, Section 2, Clause 2), in empowering the President to make treaties with the consent of the Senate, may itself be viewed as supporting authority for some types of sole executive agreements. The President’s power under this clause, together with his constitutional role as sole international negotiator for the United States¹⁴⁷ suggest the existence of ancillary authority to make agreements necessary for the conclusion of treaties. Intermediate stages of negotiations or temporary measures pending conclusion of a treaty may, for example, be reflected in protocols or *modus vivendi*.¹⁴⁸ Although there appear to be no cases explicitly recognizing the treaty clause as authority for sole executive agreements, the Court’s opinion in *Bel-*

¹⁴² Executive Order No. 12294, 46 Fed. Reg. 14111 (1981).

¹⁴³ 453 U.S. at 682.

¹⁴⁴ The Court found that related statutes, though not authorizing the President’s action, might be viewed as inviting independent Presidential measures in a situation such as the one at issue “at least *** where there is no contrary indication of legislative intent and when, as here, there is a history of congressional acquiescence of the sort engaged in by the President,” namely, claims settlement by executive agreement. *Ibid.* at 677–682. In *Barquero v. United States*, 18 F. 3d 1311 (5th Cir. 1994), *Dames & Moore* criteria were used by a Federal Circuit Court of Appeals to find an alternative constitutional basis for the President’s entry into tax information exchange agreements with countries that were not “beneficiary countries” under the Caribbean Basin Economic Recovery Act. The court primarily held, however, that the agreements were authorized under the 1986 Tax Reform Act.

¹⁴⁵ 183 U.S. 424 (1902).

¹⁴⁶ *Ibid.* at 435. Four dissenters felt that such exceptions from a nation’s territorial jurisdiction must rest on either a treaty or a statute, but noted that it was not necessary, in this case, to consider the full extent of the President’s powers in this regard. *Ibid.* at 456 and 459. Wright states, however, that “in spite of this dissent the power has been exercised by the President on many occasions. ***” Wright, Q. The Control of American Foreign Relations. 1922, p. 242 (hereafter cited as Wright, Control of Foreign Relations). See also Moore, John Bassett, A Digest of International Law, v. II, 1906, p. 389.

¹⁴⁷ The Supreme Court indicated in the *Curtiss-Wright* case that the “[President] alone negotiates. Into the field of negotiations the Senate cannot intrude; and Congress itself is powerless to invade it.”: 299 U.S. at 319.

¹⁴⁸ Constitution—Analysis and Interpretation, p. 500.

mont seems suggestive in acknowledging that there are many international compacts not always requiring Senate consent “of which a protocol [and] a modus vivendi are illustrations.”¹⁴⁹

A fourth power of the President under Article II which is relevant to the conclusion of sole executive agreements lies in his authority to “receive Ambassadors and other public Ministers” (Article II, Section 3). To the extent that the receive clause is viewed as supporting the President’s authority to “recognize” foreign governments,¹⁵⁰ it is arguable that sole executive agreements may be concluded incident to such recognition. Although the *Belmont* and *Pink* cases appear to sustain the Litvinov Agreement principally on the basis of the President’s general foreign affairs powers as Chief Executive or “sole organ” of the government in the field of international relations, the Court also seemed to emphasize that the agreement accorded American “recognition” to the Soviet Union. Thus, in *Belmont* the Court stated that:

We take judicial notice of the fact that coincident with the assignment [of Soviet claims against American nationals to the United States government], the President recognized the Soviet Government, and normal diplomatic relations were established between that government and the government of the United States, followed by an exchange of ambassadors * * * The recognition, establishment of diplomatic relations, the assignment, and agreements with respect thereto, were all parts of one transaction, resulting in an international compact between the two governments. 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 * * * [I]n respect of what was done here, the Executive had authority to speak as the sole organ of [the] government.¹⁵¹

Similarly, in *Pink* the Court declared that:

“What government is to be regarded here as representative of a foreign sovereign state is a political rather than a judicial question, and is to be determined by the political department of the government” * * * That authority is not limited to a determination of the government to be recognized. It includes the power to determine the policy which is to govern the question of recognition * * * Recognition is not always absolute; it is sometimes conditional * * * Power to remove such obstacles to full recognition as settlement of claims of our nationals * * * Unless such a power exists, the power of recognition might be thwarted or seriously impaired. No such obstacles can be placed in the way of rehabilitation of relations between this country and another nation, unless the historic conception of

¹⁴⁹ 301 U.S. at 330–331.

¹⁵⁰ See *Goldwater v. Carter*, 617 F. 2d 697, 707–708 (D.C. Cir. 1979), *jud. vac. and rem. with directions to dismiss complaint*, 444 U.S. 996 (1979). Professor Henkin observes that “[r]ecognition is indisputably the President’s sole responsibility, and for many it is an ‘enumerated’ power implied in the President’s express authority to appoint and receive ambassadors.” Henkin 1996, p. 220. See also Wright, *Control of Foreign Relations*, p. 133; Mathews, pp. 365–366; and McDougal and Lans, pp. 247–248.

¹⁵¹ 301 U.S. at 330.

the powers and responsibilities of the president in the conduct of foreign affairs * * * is to be drastically revised.¹⁵²

A fifth source of Presidential power under Article II possibly supporting the conclusion of sole executive agreements is the President's duty to "take care that the laws be faithfully executed" (Article II, Section 3). Although there appear to be no cases holding that the take care clause is specific authority for such agreements, legal commentators have asserted that the clause sanctions the conclusion of agreements in implementation of treaties.¹⁵³ Moreover, it was early opined by Attorney General Wirt in 1822 that the President's duty under this constitutional provision extends not only to the Constitution, statutes, and treaties of the United States but also to "those general laws of nations which govern the intercourse between the United States and foreign nations."¹⁵⁴ This view appears to have been accepted subsequently by the Supreme Court in *In re Neagle*,¹⁵⁵ where it was suggested in dictum that the President's responsibility under the clause includes the enforcement of "rights, duties, and obligations growing out of * * * our international relations * * *"¹⁵⁶ Accordingly, it has been argued that the clause "sanctions agreements which are necessary to fulfill [non-treaty] international obligations of the United States."¹⁵⁷

Sole executive agreements validly concluded pursuant to one or more of the President's independent powers under Article II of the Constitution may be accorded status as Supreme Law of the Land for purposes of superseding any conflicting provisions of state law. As explained by the Supreme Court in *Belmont*:

Plainly, the external powers of the United States are to be exercised without regard to the state laws or policies. The supremacy of a treaty in this respect has been recognized from the beginning * * * And while this rule in respect of treaties is established by the express language of cl. 2, Art. VI, of the Constitution, the same rule would result in the case of all international compacts and agreements from the very fact 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.¹⁵⁸

¹⁵² 315 U.S. at 229–230. See also *Dole v. Carter*, 444 F. Supp. 1065 (D. Kan. 1977), *motion for injunction pending appeal denied*, 569 F. 2d 1108 (10th Cir. 1977), where the district court relied on the President's recognition power and his general "sole organ" executive authority to validate a Presidential agreement transferring Hungarian coronation regalia to the Republic of Hungary. On appeal, however, the Court of Appeals "decline[d] to enter into any controversy relating to distinctions which may be drawn between executive agreements and treaties" and adjudged the issue a nonjusticiable political question.

¹⁵³ See McDougal and Lans, p. 248, and Mathews, p. 367. See also Henkin 1996, pp. 219–220.

¹⁵⁴ 1 Op. Atty. Gen. 566, 570 (1822).

¹⁵⁵ 135 U.S. 1 (1890).

¹⁵⁶ *Ibid.* at 64.

¹⁵⁷ McDougal and Lans, p. 248. McDougal and Lans state that the "take care" clause provides an alternate source of authority for the Boxer Indemnity Protocol of 1901 following cessation of the Boxer Rebellion in China. *Ibid.*, p. 248, n. 150. The text of the protocol may be found in Malloy, *Treaties*, v. 2, p. 2006. Concerning the use of the "take care" clause as authority for executive implementation of international law, Professor Henkin notes that— * * * Writers have not distinguished between (a) authority to carry out the obligations of the United States under treaty or customary law (which can plausibly be found in the 'take care' clause); (b) authority to exercise rights reserved to the United States by international law or given it by treaty; and (c) authority to compel other states to carry out their international obligations to the United States. Henkin 1996, p. 347, n. 54.

¹⁵⁸ 301 U.S. at 331. See also *Pink*, 315 U.S. at 230–234.

However, notwithstanding that treaties and Federal statutes are treated equally by the Constitution with legal primacy accorded the measure which is later in time,¹⁵⁹ the courts have been reluctant to enforce Presidential agreements in the face of prior congressional enactments. Judicial uncertainty was early evidenced in *Watts v. United States*, supra, where the Supreme Court of the Territory of Washington, after affirming on the basis of the President's "executive power" the validity of an agreement with Great Britain providing for the joint occupation of San Juan Island, tentatively enforced the agreement against a prior Federal law defining the government of the territory. According to the court:

Such conventions are not treaties within the meaning of the Constitution, and, as treaties supreme law of the land, conclusive on the court, but they are provisional arrangements, rendered necessary by national differences involving the faith of the nation and entitled to the respect of the courts. They are not a casting of the national will into the firm and permanent condition of law, and yet in some sort they are for the occasion an expression of the will of the people through their political organ, touching the matters affected; and to avoid unhappy collision between the political and judicial branches of the government, both which are in theory inseparably all one, such an expression to a reasonable limit should be followed by the courts and not opposed, though extending to the temporary restraint or modification of the operation of existing statutes. Just as here, we think, this particular convention respecting San Juan should be allowed to modify for the time being the operation of the organic act of this Territory (Washington) so far forth as to exclude to the extent demanded by the political branch of the government of the United States, in the interest of peace, all territorial interference for the government of that island.¹⁶⁰

Decisions by lower Federal courts of more recent date, however, have voided sole executive agreements which were incompatible with pre-existing Federal laws. Thus, in *United States v. Guy W. Capps, Inc.*,¹⁶¹ a U.S. Circuit Court of Appeals refused to enforce a Presidential agreement concerning the importation of Canadian potatoes into the United States inasmuch as the agreement contravened the requirements of the Agricultural Act of 1948.¹⁶² According to the court, " * * * whatever the power of the executive with respect to making executive trade agreements regulating foreign commerce in the absence of action by Congress, it is clear that the executive may not through entering into such an agreement avoid complying with a regulation prescribed by Congress."¹⁶³ The court's rationale for this conclusion was grounded upon Congress' expressly delegated authority under Article I, Section 8, Clause 3, of the Constitution to regulate foreign commerce (as reflected in the statute in the present case) and upon the following statement

¹⁵⁹ *Whitney v. Robertson*, 124 U.S. 190 (1888).

¹⁶⁰ 1 Wash. Terr. at 294. Elsewhere the court "presumed" that Congress had been "fully apprised" of the situation and noted tacit congressional acquiescence for a long term of years. *Ibid.*, p. 293.

¹⁶¹ 204 F. 2d 655 (4th Cir. 1953), *aff'd* on other grounds, 348 U.S. 296 (1955).

¹⁶² Agricultural Act of 1948, § 3, 62 Stat. 1247, 1248-1250.

¹⁶³ 204 F. 2d at 659-660.

from Justice Jackson's frequently quoted concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*.¹⁶⁴

When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.¹⁶⁵

Similar holdings have occurred in subsequent cases on the authority of *Guy Capps*. In *Seery v. United States*,¹⁶⁶ for example, the U.S. Court of Claims denied enforcement of a Presidential agreement settling post-World War II claims with Austria¹⁶⁷ in the face of prior Federal law authorizing suit against the United States on constitutional claims.¹⁶⁸ The court declared that:

*** It would indeed be incongruous if the Executive Department alone, without even the limited participation by Congress which is present when a treaty is ratified, could not only nullify the Act of Congress consenting to suit on Constitutional claims, but, by nullifying that Act of Congress, destroy the constitutional right of a citizen. In *United States v. Guy W. Capps* *** the court held that an executive agreement which conflicted with an Act of Congress was invalid.¹⁶⁹

Reference may also be made to *Swearingen v. United States*¹⁷⁰ where a Federal District Court treated the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977¹⁷¹ as a sole executive agreement, and, as such, void for purposes of conferring an income tax exemption on American employees of the Panama Canal Commission in derogation of Section 61(a) of the Internal Revenue Code.¹⁷² The rule of the *Guy Capps* case is also reflected in the Department of State's Circular 175 procedure governing the making of international agreements,¹⁷³ as well as in the American Law Institute's current Restatement (Third) of the Foreign Relations Law of the United States.¹⁷⁴

Notwithstanding that the rule of the *Guy Capps* case appears to enjoy general acceptance, contrary arguments have been advanced by other authorities, including the just cited Restatement (Third).¹⁷⁵ The latter thus states that:

¹⁶⁴ 343 U.S. 579 (1952).

¹⁶⁵ *Ibid.* at 659, quoting Justice Jackson's concurring opinion in *Youngstown*, 343 U.S. at 637-638.

¹⁶⁶ 127 F. Supp. 601 (Ct. Cl. 1955).

¹⁶⁷ Agreement Respecting the Settlement of Certain War Accounts and Claims, United States-Austria, June 21, 1947, 61 Stat. 4168.

¹⁶⁸ 28 U.S.C. § 1491.

¹⁶⁹ 127 F. Supp. at 607.

¹⁷⁰ 565 F. Supp. 1019 (D. Colo. 1983).

¹⁷¹ Agreement in Implementation of Article III of the Panama Canal Treaty, with Annexes, Agreed Minute and Related Notes, signed Sept. 7, 1977, 33 U.S.T. 141, TIAS 10031.

¹⁷² 26 U.S.C. § 61(a). Compare *Corliss v. United States*, 567 F. Supp. 162 (1983), holding, on the basis of the legislative history of the agreement in the U.S. Senate, that the agreement was not intended to exempt American employees from Federal income tax liability.

¹⁷³ 11 For. Aff. Man. § 721.2b(3).

¹⁷⁴ Rest. 3d, § 115, Reporters' Note 5.

¹⁷⁵ *Ibid.*

*** it has been argued that a sole executive agreement within the President's constitutional authority is federal law, and United States jurisprudence has not known federal law of different constitutional status. "All Constitutional acts of power, whether in the executive or in the judicial department, have as much legal validity and obligation as if they proceeded from the legislature." The Federalist No. 64 (Jay), cited in *United States v. Pink*, supra, 315 U.S. at 230 *** See Henkin, *Foreign Affairs and the Constitution* 186, 432-33 (1972). Of course, even if a sole executive agreement were held to supersede a statute, Congress could reenact the statute and thereby supersede the intervening executive agreement as domestic law.¹⁷⁶

The precedential effect of the *Guy Capps* rule may also be somewhat eroded by judicial dicta suggesting that the circuit court's opinion in the case was "neutralized" by the Supreme Court's affirmance on other grounds¹⁷⁷ and that the question as to the effect of a Presidential agreement upon a prior conflicting act of Congress has "apparently not yet been completely settled."¹⁷⁸ Moreover, in the two cases which have specifically adhered to the *Guy Capps* rule—*Seery* and *Swearingen*—the courts, respectively, were either strongly influenced by Bill of Rights considerations or failed to consider the possibility that the agreement in issue may have effectively received the sanction of the Senate as an agreement pursuant to an existing treaty. It appears, therefore, that the law on this point may yet be in the course of further development.

¹⁷⁶ Ibid.

¹⁷⁷ *South Puerto Rico Sugar Co. Trading Corp. v. United States*, 334 F. 2d 622, 634, n. 16 (Ct. Cl. 1964).

¹⁷⁸ *American Bitumils & Asphalt Co. v. United States*, 146 F. Supp. 703, 708 (Ct. Cl. 1956), citing both *Guy Caps* and *Seery*.

Exhibit “3”

HOUSE CONCURRENT RESOLUTION

ESTABLISHING A JOINT LEGISLATIVE INVESTIGATING COMMITTEE TO INVESTIGATE THE STATUS OF TWO EXECUTIVE AGREEMENTS ENTERED INTO IN 1893 BETWEEN UNITED STATES PRESIDENT GROVER CLEVELAND AND QUEEN LILI'UOKALANI OF THE HAWAIIAN KINGDOM, CALLED THE LILI'UOKALANI ASSIGNMENT AND THE AGREEMENT OF RESTORATION.

1 WHEREAS, on December 19, 1842, United States President John
2 Tyler recognized the Hawaiian Kingdom as an independent and
3 sovereign State, extended full and complete diplomatic
4 recognition to the Hawaiian Government, and entered into
5 treaties and conventions with the Hawaiian government in 1849,
6 1875, and 1887; and

7
8 WHEREAS, on January 14, 1893, John L. Stevens (hereinafter
9 referred to as the "United States minister"), the United States
10 minister plenipotentiary assigned to the Hawaiian Kingdom
11 government, conspired with a small group of insurgents of
12 diverse nationalities to overthrow the Hawaiian Kingdom
13 government; and

14
15 WHEREAS, in pursuance of the conspiracy, the United States
16 Minister and naval representatives of the United States caused
17 armed naval forces to invade the Hawaiian Kingdom on January 16,
18 1893, and to position themselves near government buildings and
19 Iolani Palace in order to provide protection to the insurgents;
20 and

21
22 WHEREAS, on the afternoon of January 17, 1893, this small
23 group of insurgents declared themselves to be a Provisional
24 Government; and

25
26 WHEREAS, the United States minister thereupon extended
27 diplomatic recognition to the insurgents in violation of



1 treaties between the United States and the Hawaiian Kingdom and
2 in violation of international law; and
3

4 WHEREAS, because the police force was unable to apprehend
5 the insurgents for violating the law of treason without the risk
6 of bloodshed between the police and the United States troops,
7 Queen Lili'uokalani issued the following protest temporarily,
8 conditionally yielding her executive power to the United States
9 government:

10
11 "I Liliuokalani, by the Grace of God and under
12 the Constitution of the Hawaiian Kingdom, Queen, do
13 hereby solemnly protest against any and all acts done
14 against myself and the Constitutional Government of
15 the Hawaiian Kingdom by certain persons claiming to
16 have established a Provisional Government of and for
17 this Kingdom.
18

19 That I yield to the superior force of the United
20 States of America whose Minister Plenipotentiary, His
21 Excellency John L. Stevens, has caused United States
22 troops to be landed at Honolulu and declared that he
23 would support the Provisional Government.
24

25 Now to avoid any collision of armed forces, and
26 perhaps the loss of life, I do this under protest and
27 impelled by said force yield my authority until such
28 time as the Government of the United States shall,
29 upon facts being presented to it, undo the action of
30 its representatives and reinstate me in the authority
31 which I claim as the Constitutional Sovereign of the
32 Hawaiian Islands.
33

34 Done at Honolulu this 17th day of January, A.D.
35 1893"; and
36

37 WHEREAS, under Article 31 of the Constitution of the
38 Kingdom of Hawaii, as the constitutional monarch of the
39 Hawaiian islands, the Queen was vested with the executive
40 power to faithfully execute and administer Hawaiian law:
41 "To the King belongs the Executive power"; and
42

43 WHEREAS, on March 9, 1893, President Grover Cleveland
44 accepted the temporary and conditional assignment of executive



1 power from the Queen and investigated the circumstances of the
2 overthrow of the Hawaiian Kingdom government; and
3

4 WHEREAS, on October 18, 1893, the investigation concluded
5 that the United States violated international law and the
6 Hawaiian Kingdom government must be restored to its status
7 before the landing of United States troops; and
8

9 WHEREAS, negotiations for settlement and restoration took
10 place between Queen Lili'uokalani and United States minister
11 plenipotentiary, Albert Willis, between November 13, 1893, and
12 December 18, 1893, at the United States Embassy in Honolulu; and
13

14 WHEREAS, a settlement was reached on December 18, 1893,
15 whereby Queen Lili'uokalani signed the following declaration
16 that was dispatched to the United States State Department by the
17 United States minister on December 20, 1893:
18

19 "I, Liliuokalani, in recognition of the high
20 sense of justice which has actuated the President of
21 the United States, and desiring to put aside all
22 feelings of personal hatred or revenge and to do what
23 is best for all the people of these Islands, both
24 native and foreign born, do hereby and herein solemnly
25 declare and pledge myself that, if reinstated as the
26 constitutional sovereign of the Hawaiian Islands, that
27 I will immediately proclaim and declare,
28 unconditionally and without reservation, to every
29 person who directly or indirectly participated in the
30 revolution of January 17, 1893, a full pardon and
31 amnesty for their offenses, with restoration of all
32 rights, privileges, and immunities under the
33 constitution and the laws which have been made in
34 pursuance thereof, and that I will forbid and prevent
35 the adoption of any measures of proscription or
36 punishment for what has been done in the past by those
37 setting up or supporting the Provisional Government.
38

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



1
2 I furthermore solemnly pledge myself and my
3 Government, if restored, to assume all the obligations
4 created by the Provisional Government, in the proper
5 course of administration, including all expenditures
6 for military or police services, it being my purpose,
7 if restored, to assume the Government precisely as it
8 existed on the day when it was unlawfully overthrown.

9
10 Witness my hand this 18th of December, 1893"; and

11
12 WHEREAS, there exist two agreements:

- 13
14 (1) The Lili'uokalani Assignment, whereby President Grover
15 Cleveland accepted the obligation of administering
16 Hawaiian Law in an assignment of executive power; and
17
18 (2) The Agreement of Restoration, whereby the Queen agreed
19 to grant amnesty after return of executive power and
20 restoration of the government; and

21
22 WHEREAS, President Cleveland and his successors in office
23 have violated these agreements by not administering Hawaiian
24 Kingdom Law and not restoring the Hawaiian Kingdom government;
25 and

26
27 WHEREAS, for the past one hundred eighteen years the Office
28 of President has retained the temporary and conditional
29 assignment of Hawaiian executive power from the Queen; and

30
31 WHEREAS, these agreements are called sole executive
32 agreements under United States constitutional law and the basis
33 of a federal lawsuit in Washington, D.C., filed by Dr. David
34 Keanu Sai against President Barack Obama, Secretary of State
35 Hillary Clinton, Secretary of Defense Robert Gates, Admiral
36 Robert Willard, and Governor Linda Lingle (case no. 1:10-CV-
37 00899CKK) on June 1, 2010; and

38
39 WHEREAS, on November 13, 2010, the Association of Hawaiian
40 Civic Clubs at its 51st Convention at Keauhou, Island of Hawaii,
41 unanimously passed Resolution No. 10-15, "Acknowledging Queen
42 Lili'uokalani's Agreements with President Grover Cleveland to
43 Execute Hawaiian Law and to Restore the Hawaiian Government";
44 and



H.C.R. NO. 107

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WHEREAS, under the Supremacy Clause of the United States Constitution, "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, any Thing in the Constitution or Laws of any State to the contrary notwithstanding"; and

WHEREAS, the United States Supreme Court declared in United States v. Belmont, 301 U.S. 324 (1937), that executive agreements arising out of the President's sole authority over foreign relations does not require ratification by the Senate or the approval of Congress, and has the force and effect of a treaty; and

WHEREAS, statutes enacted by the Legislature of the State of Hawaii that conflict with valid executive agreements would be considered void under the Supremacy Clause; and

WHEREAS, a joint legislative investigating committee would settle the issue of whether certain statutes enacted by the Hawaii State Legislature violate the United States Constitution; and

WHEREAS, section 21-3, Hawaii Revised Statutes, authorizes the establishment of a legislative investigating committee by resolution, and Rule 14 of the Rules of the House of Representatives and Rule 14(3) of the Rules of the Senate allow for the establishment of special committees; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-sixth Legislature of the State of Hawaii, Regular Session of 2011, the Senate concurring, that:

- (1) The Legislature hereby establishes a joint legislative investigating committee to investigate the status of two executive agreements entered into between President Grover Cleveland of the United States and Queen Lili'uokalani of the Hawaiian Kingdom in 1893, called the Lili'uokalani Assignment and the Agreement of Restoration;
- (2) The purpose and duties of the joint investigating committee shall be to inquire into the status of the

1 executive agreements by holding meetings and hearings
2 as necessary, receiving all information from the
3 inquiry, and submitting a final report to the
4 Legislature;

5
6 (3) The joint investigating committee shall have every
7 power and function allowed to an investigating
8 committee under the law, including without limitation
9 the power to:

10
11 (A) Adopt rules for the conduct of its proceedings;

12
13 (B) Issue subpoenas requiring the attendance and
14 testimony of the witnesses and subpoenas duces
15 tecum requiring the production of books,
16 documents, records, papers, or other evidence in
17 any matter pending before the joint investigating
18 committee;

19
20 (C) Hold hearings appropriate for the performance of
21 its duties, at times and places as the joint
22 investigating committee determines;

23
24 (D) Administer oaths and affirmations to witnesses at
25 hearings of the joint investigating committee;

26
27 (E) Report or certify instances of contempt as
28 provided in section 21-14, Hawaii Revised
29 Statutes;

30
31 (F) Determine the means by which a record shall be
32 made of its proceedings in which testimony or
33 other evidence is demanded or adduced;

34
35 (G) Provide for the submission, by a witness's own
36 counsel and counsel for another individual or
37 entity about whom the witness has devoted
38 substantial or important portions of the
39 witness's testimony, of written questions to be
40 asked of the witness by the chair; and

41
42 (H) Exercise all other powers specified under chapter
43 21, Hawaii Revised Statutes, with respect to a
44 joint investigating committee; and



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BE IT FURTHER RESOLVED that the joint investigating committee shall consist of the following ten members:

- (1) The Chairperson of the House Committee on Finance;
- (2) The Chairperson of the House Committee on Water, Land, and Ocean Resources;
- (3) The Chairperson of the House Committee on Hawaiian Affairs;
- (4) One member of the majority leadership from the House of Representatives who shall be appointed by the Speaker of the House of Representatives;
- (5) One member of the minority leadership from the House of Representatives who shall be appointed by the House Minority Leader;
- (6) The Chairperson of the Senate Ways and Means Committee;
- (7) The Chairperson of the Senate Committee on Water, Land, and Agriculture;
- (8) The Chairperson of the Senate Hawaiian Affairs Committee;
- (9) One member of the majority leadership from the Senate who shall be appointed by the President of the Senate; and
- (10) One member of the minority leadership from the Senate who shall be appointed by the Senate Minority Leader; and

BE IT FURTHER RESOLVED that the joint investigating committee shall submit its findings and recommendations to the Legislature no later than twenty days prior to the convening of the Regular Session of 2012 and shall dissolve upon submission of its report; and

1 BE IT FURTHER RESOLVED that certified copies of this
2 Concurrent Resolution be transmitted to the President of the
3 United States, members of Hawaii's congressional delegation, the
4 Governor, the President of the Hawaii State Senate, the Speaker
5 of the Hawaii State House of Representatives, the Director of
6 Finance, the Attorney General, and the Auditor.
7
8
9

OFFERED BY: Mel Carroll

MAR 11 2011



IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DEUTSCHE BANK NATIONAL TRUST) CIVIL NO. 11-1-0590
COMPANY, AS TRUSTEE IN TRUST FOR THE)
BENEFIT OF THE CERTIFICATE HOLDERS)
FOR ARGENT SECURITIES INC., ASSET-) NOTICE OF HEARING MOTION
BACKED PASS-THROUGH CERTIFICATES,)
SERIES 2006-W2,)
)
Plaintiff,)
)
vs.)
)
DIANNE DEE GUMAPAC; KALE KEPEKAIO)
GUMAPAC; JOHN DOES 1-50; AND JANE)
DOES 1-50,)
)
Defendants.)
)
)
_____)

NOTICE OF HEARING MOTION

NOTICE IS HEREBY GIVEN that Defendant KALE KEPEKAIO GUMAPAC'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: Hilo, Hawai'i, January 13, 2012.

Respectfully presented,

KALE KEPEKAIO GUMAPAC
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, LLC
Charles Prather, Sofia Hirosane
900 Fort Street Mall, Suite 800
Honolulu, HI 96813

Attorneys for Plaintiff
DEUTSCHE BANK NATIONAL TRUST COMPANY

Dated: Keaau, Hawai'i, January 13, 2012.

Respectfully presented,

KALE KEPEKAIO GUMAPAC
Defendant, pro se

Exhibit “4”

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

CIVIL NO. 11-1-590

DEUTSCHE BANK NATIONAL
TRUST COMPANY, AS
TRUSTEE IN TRUST FOR THE
BENEFIT OF THE
CERTIFICATEHOLDERS FOR
ARGENT SECURITIES INC.,
ASSET-BACKED
PASS-THROUGH
CERTIFICATES, SERIES
2006-W2,

Plaintiffs,

vs.

DIANNE DEE GUMAPAC;
KALE KEPEKAI GUMAPAC;
JOHN DOES 1-50; AND JANE
DOE 1-50

Defendants.

TRANSCRIPT OF PROCEEDINGS

held in connection with the above-entitled cause
before the Honorable Greg K. Nakamura, Circuit Court
Judge, First Division, presiding, on the 14th day of
February, 2012.

REPORTED BY: GERALDINE L. SAFFERY, CSR 328, RPR

1 APPEARANCES:

2 CHARLES R. PRATHER, AAL for Plaintiffs
3 RCO Hawaii LLC
4 900 Fort St. Mall
5 Suite 800
6 Honolulu, HI 96813

7 DEXTER K. KAIAMA, AAL Special Appearance
8 Seven Waterfront Plaza for the Defendants
9 500 Ala Moana Blvd.
10 Suite 400
11 Honolulu, HI 96813

12 Also present

13 Mr. Kale Kepekaio Gumapac
14 HC2 Box 9607
15 Keaau, HI 96749
16
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1 TUESDAY, FEBRUARY 14, 2012

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3 THE CLERK: Civil 2011-590 Deutsche Bank
4 vs. Dianne Gumapac, et al.; Defendant Kale Gumapac's
5 Motion to Dismiss Complaint pursuant to H.R.C.P.
6 12(b)(1).

7 MR. PRATHER: Good morning, Your Honor.
8 Charles Prather on behalf of the Plaintiff.

9 MR. KAIAMA: Good morning, Your Honor.
10 Dexter -- Dexter Kaiama on behalf of the -- uh --
11 Mr. Gumapac. I'm making a special appearance for
12 purposes of this motion, Your Honor.

13 You need me to repeat my name in there?

14 THE REPORTER: (No verbal response.)

15 MR. KAIAMA: Okay.

16 THE COURT: So anything to add with
17 respect to the motion?

18 MR. KAIAMA: Thank you, Your Honor, if I
19 may.

20 Um, I -- a -- again, in Mr. Gumapac's
21 motion and his reply memorandum, I guess the first order
22 of business, Your Honor, is the taking of judicial
23 notice of the documents set forth in the, uh, both the
24 motion and the reply memorandum, that being the, um,
25 what we -- what's referred to as the Liliuokalani

1 Assignment and the Agreement of Restoration, these are
2 executive documents on affairs in Hawaiì, 1894 to 1895;
3 as well as the statements made by House of
4 Representative Thomas Ball and Senator Augustus Bacon
5 from the 55th Congress, Second Session, 1898; and House
6 Concurrent Resolution No. 107, uh, which is State of
7 Hawaiì House of Representatives.

8 Your Honor, in addition, in the reply
9 memorandum, um, Mr. Gumapac does ask and we would
10 request the Court take judicial notice of the cases, U.
11 S. Supreme Court cases in: *U.S. vs. Belmont*, 301 U.S.
12 324; *U.S. vs. Pink*, 315 U.S. 203; and *American Insurance*
13 *Association vs. Garamendi*, 539 U.S. 396.

14 Uh, a -- again, Your Honor, respectfully,
15 um, our motion is predicated on the -- the Court's
16 taking judicial notice of these documents and the cases.
17 My understanding is that the, um, um, Plaintiffs'
18 counsel has provided no opposition to the Court's taking
19 judicial notice, uh, and this court, Your Honor, is
20 familiar with, um, this request having taken judicial
21 notice I believe on two other occasions of these
22 documents.

23 THE COURT: well the only thing that, uh,
24 might not have seen before, uh, is that study prepared
25 for the Committee on Foreign Relations, but you tell me

1 that I did, uh, I'll accept what -- your word.

2 MR. KAIAMA: Uh, and -- and Your Honor,
3 um, previously we had not asked the Court to take
4 judicial notice of that study. Um, so again, uh, for
5 purposes of this motion, um, uh, we're requesting just
6 the documents that's referred to in our motion itself,
7 the documents that I referred to.

8 THE COURT: To include that particular
9 document?

10 MR. KAIAMA: Well, Your Honor, um, I --
11 I -- I guess at this time, since we've included it in
12 our exhibits, I -- I would ask that the Court take
13 judicial notice of that document as well, which is also,
14 uh, an -- a -- a -- a copy of a official publication
15 from, uh, from a government -- a government publication,
16 Your Honor.

17 THE COURT: So is it, uh, Mister
18 "Pray-ther"? "Pra-ther"?

19 MR. PRATHER: "Pray-ther", Your Honor.

20 THE COURT: Prather, okay.
21 You want to respond to the request?

22 MR. PRATHER: Your Honor, the Court can
23 give whatever weight it wants to the documents that have
24 been attached to the motion.

25 THE COURT: Okay.

1 So the Court will take judicial notice of
2 the documents, um, that were attached and for which
3 judicial notice is requested. And Court, of course,
4 would take judicial notice of any United States Supreme
5 Court opinions.

6 MR. KAIAMA: Okay. Thank you, Your
7 Honor.

8 Um, the Court having taken judicial
9 notice, uh, um, I'll-- I'll -- I will try to be brief.

10 Our position is, uh, pursuant to *U.S. vs.*
11 *Pink, U.S. vs. Belmont*, and American Associate --
12 *American Insurance Association vs. Garamendi*, um, uh,
13 we believe that the Court, um, uh, should dismiss the
14 complaint. We've now met the burden as set forth under
15 *Lorenzo, State of Hawaii vs. Lorenzo*. We've provided
16 the Court now with evidence that the Kingdom of Hawaii
17 continues to exist with the attributes, um, that the
18 Court's taking judicial notice.

19 If I may refer to, um, one additional
20 rule, Your Honor, and that is Hawaii Rule of Evidence
21 302, Section B. Um, and then that is presumptions
22 imposing burden on producing evidence, the -- and I'll
23 read for you just briefly, Your Honor.

24 "The affect of a presumption
25 imposed in the burden of producing evidence

1 is to require the trier of fact to assume
2 the existence of a presumed fact unless and
3 until evidence is introduced which would
4 support a finding of its nonexistence, in
5 which case no instruction or presumption
6 shall be given and the trier of fact shall
7 determine the existence or nonexistence of
8 the presumed fact from the evidence and
9 without regard to the presumption."

10 Your Honor, our position is that, um, the
11 Plaintiffs cannot rely merely on the recitation of a
12 State's, uh, State, uh, State statute, um, that is in
13 fact a presumption that we've now provided evidence, um,
14 of its nonexistence, and the Court no longer can rely on
15 the Plaintiffs', um, on the presumption of that State,
16 um, statute and must make -- make an -- in -- in fact
17 what it's done now, Your Honor, it's our position
18 respectfully, that we've now replaced the presumption
19 and that presumption now is a presumption that the
20 Kingdom of Hawai'i continues to exist, that we've met our
21 burden, that this Court in fact has no jurisdiction and
22 must dismiss the complaint.

23 Uh, and also briefly, Your Honor, um, as
24 set forth in our brief, again, um, what we've presented
25 is evidence of an executive agreement. An executive

1 agreement being the supreme call, uh, law of the land
2 under the supremacy clause, it is both my obligation and
3 respectfully, uh, submitted, that it's the Court's
4 obligation at this time to acknowledge the existence of
5 that executive agreement and acknowledge the fact that
6 this Court no longer has jurisdiction.

7 Uh, thank you, Your Honor.

8 THE COURT: Mr. Prather?

9 MR. PRATHER: Uh, I mean I believe the
10 Court's familiar with the issues. I think we've set out
11 our opposition in our -- our written filing. I don't
12 have much to add to the -- to this time other than the
13 fact that I'm not aware of any citation to Rule 302
14 either in the motion or in reply. As it stands I think
15 our opposition's already been set forth.

16 THE COURT: Okay.

17 So what we're -- Court will deny the
18 motion. Court believes it has jurisdiction pursuant to
19 Article 6 of the Hawaii State Constitution and H.R.S.
20 §603-21.9.

21 Mr. Prather, please submit a form of the
22 order.

23 MR. PRATHER: Thank you.

24 THE COURT: Thank you.

25 MR. KAIAMA: Uh, and Your Honor, just for

1 clarification, um, a -- again I think we've dealt with
2 this in the past, I think we would -- Mr. Gumapac would
3 have 20 days upon the filing of the order to file his
4 answer to the complaint?

5 THE COURT: Mr. Prather, as a matter of
6 practice, uh, I ask, um, in regard to the form of the
7 order, that it -- there be a included provision which
8 allows, um, a defendant to respond within 20 days from
9 the entry of the order to the complaint, answer within
10 that 20-day period.

11 MR. PRATHER: Twenty days from the entry
12 of the order --

13 THE COURT: Yeah.

14 MR. PRATHER: -- from today?

15 THE COURT: Uh, from the entry of the
16 order.

17 MR. PRATHER: Okay.

18 MR. KAIAMA: Respectfully speaking, uh,
19 uh, requesting, Your Honor, is -- and -- and I -- I know
20 it's within the Court's discretion, but may we ask that
21 the -- that the, uh, Plaintiffs' counsel provide a, um,
22 um, findings of facts, conclusions of law, and an order
23 for purposes of this motion?

24 THE COURT: I think an order would be
25 sufficient 'cause it's a, to me, a clear issue of

1 law.

2 MR. PRATHER: Thank you.

3 MR. KAIAMA: Thank you, Your Honor.

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1 COUNTY OF HAWAII)

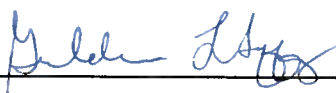
2 STATE OF HAWAII)

3 CERTIFICATE

4 I, Geraldine L. Saffery, CSR 328, RPR,
5 official Court Reporter of the Third Circuit Court, do
6 hereby certify that the foregoing pages numbered 3 to
7 10, inclusive, contains a true and accurate
8 transcription, done to the best of my ability, of the
9 proceedings held in connection with the aforementioned
10 cause.

11 To protect the transcript's integrity,
12 this certification of authenticity and accuracy is valid
13 only with an original inked signature and an unbroken
14 transcript seal.

15 Dated this 22nd day of February, 2012.

16
17 

18 _____
19 GERALDINE L. SAFFERY, CSR 328, RPR
20
21
22
23
24
25

Attachment ‘H’

**LAW OFFICE OF
DEXTER K. KAIAMA**

111 Hekili Street, Suite A1607
Kailua, Hawai'i 96734

Tel. No. (808) 284-5675

February 19, 2013

International Criminal Court
Office of the Prosecutor
Communications
Post Office Box 19519
2500 CM The Hague
The Netherlands.

Re: WAR CRIME COMPLAINT

Perpetrators: Circuit Court Judge GREG K. NAKAMURA; Plaintiff
DEUTSCHE BANK TRUST COMPANY AMERICAS; and Plaintiff's attorneys
CHARLES R. PRATHER, ESQ., SOFIA M. HIROSANE, ESQ., and MICHAEL
G.K. WONG, ESQ.

Victim: HARRIS BRIGHT

Madam Prosecutor:

This communication and complaint is provided to the office of the Prosecutor pursuant to the Hawaiian Kingdom's accession to the International Criminal Court's Rome Statute deposited with the Secretary-General of the United Nations on December 10, 2012, and the Hawaiian Kingdom's accession to the 1949 fourth Geneva Convention deposited with the Swiss Federal Council on January 14, 2013. Article 2, fourth Geneva Convention, provides: "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."

Pursuant to the Rome Statute's Article 8—*War crimes*, (1) the court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes. (2) For the purpose of this

Statute, “war crimes” means: (a)(vi) willfully depriving a...protected person of the rights of fair and regular trial.

Elements of the war crime of denying a fair trial include:

1. The perpetrator deprived one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, in the third and the fourth Geneva Conventions of 1949.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an [occupation of the territory of a High Contracting Party].
5. The perpetrator was aware of factual circumstances that established the existence of an [occupation of the territory of a High Contracting Party].

With respect to the last two elements listed for the war crime of denying a fair trial:

1. **There is no requirement for a legal evaluation by the perpetrator as to the existence of an [occupation of the territory of a High Contracting Party] or its character as international or non-international;**
2. In that context there is no requirement for awareness by the perpetrator of the facts that established the character of the [occupation of the territory of a High Contracting Party] as international or non-international;
3. **There is only a requirement for the awareness of the factual circumstances that established the existence of an [occupation of the territory of a High Contracting Party] that is implicit in the terms “took place in the context of and was associated with.”**

BACKGROUND

I represent a client who has been deprived of a fair and regular trial in ejectment proceedings in the State of Hawai'i Circuit Court of the Third Circuit. The Circuit Court of the Third Circuit is a United States court illegally constituted in the territory of the Hawaiian Kingdom.

Unable to procure a treaty of cession from the Hawaiian Kingdom government acquiring the Hawaiian Islands as required by international law, Congress enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War (30 U.S. Stat. 750) as a war measure. Congressional laws have no extraterritorial effect and are confined to United States territory.

The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War. The occupation reinforced and supplied the troops that have been occupying the Spanish colonies of Guam and the Philippines since May 1, 1898. Following the close of the Spanish-American War by the Treaty of Paris signed December 10, 1898 (30 U.S. Stat. 1754), U.S. troops remained in the Hawaiian Islands and continued its occupation to date in violation of international law.

Article 6, 1863 Lieber Code, regulated U.S. troops during the occupation of the Hawaiian Islands in 1898 and mandated the Commander of U.S. troops to administer the laws of the occupied country, being the civil and penal laws of the Hawaiian Kingdom.

Article 6 was superseded by Article 43, 1899 Hague Convention, II (32 U.S. Stat. 1803), and then superseded by Article 43, 1907 Hague Convention, IV (36 U.S. Stat. 2227).

Article 43 of the 1907 Hague Convention, IV, reinforces the 1893 *Lili'uokalani assignment* that mandates the President to administer the civil and penal laws of the Hawaiian Kingdom. On August 12, 1949, the United States signed and ratified the (IV) *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* of 12 August 1949 (6 U.S.T. 3516, T.I.A.S No. 3365, 75 U.N.T.S. 287). In July 1956, the U.S.

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Department of the Army published Field Manual 27-10—The Law of Land Warfare.
According to the United States Supreme Court:

“Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens; and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.... [T]he court recognized, and in each of the cases cited [involving the exercise of the sovereign power of the United States] found, the warrant for its conclusion is not in the provisions of the Constitution, but in the law of nations”. United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 318 (1936).

Illegally usurping Hawaiian sovereignty, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai‘i* on April 30, 1900 (31 U.S. Stat. 141); and on March 18, 1959, President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai‘i into the Union* (73 U.S. Stat. 4). These laws not only have no extraterritorial effect, but stand in direct violation of the 1907 Hague Convention, IV, the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV, and international law.

The aforementioned Acts of the U.S. Congress constitute a usurpation of sovereignty during occupation by the United States and is the basis of the court’s exercise of jurisdiction within the territory of the Hawaiian Kingdom. *Id.* Section 12. Without a treaty of cession, whereby the Hawaiian Kingdom transferred the Hawaiian Islands to the United States, this congressional act is a usurpation of Hawaiian sovereignty and therefore a **“war crime”** committed under the heading of **“usurpation of sovereignty during occupation.”**

Since 1898, the United States methodically and pursuant to plan “Americanized” the Hawaiian Islands by denationalizing the occupants of the Hawaiian Kingdom.

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Through “Americanization” the national character of the Hawaiian Kingdom as an independent and sovereign State was eventually eradicated by assimilating Hawaiian nationals into the United States of America politically, culturally, socially, and economically. This plan included mass migration of American colonists, economic domination, installation of puppet governments, purported *de jure* annexation, and the installation of military bases throughout the Hawaiian Islands. As “Germanization in occupied territories” during the Second World War was a war crime, being Count III (J) of the Nuremburg Indictment, so is “Americanization.”

Under *An Act To amend title 18, United States Code, to carry out the international obligations of the United States under the Geneva Conventions to provide criminal penalties for certain war crimes* (Public Law 104-192, 104th Congress), members of the United States Armed Forces and United States nationals situated within the territory of the Hawaiian Kingdom are liable to be prosecuted for the commission of war crimes by the United States Pacific Command, being the occupant of the Hawaiian Kingdom. Pursuant Title 18, United States Code, §2441(c)(1), a war crime is any conduct “defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949.” Article 147, Fourth Geneva Convention defines a grave breach, *inter alia*, as “willfully depriving a protected person of the rights of fair and regular trial.” §2441(a) provides “Whoever,...outside of the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.” Subsection (b) provides “The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

Courts illegally constituted in the territory of another sovereign and independent state is an extension of this war crime. See Alwyn V. Freeman, “War Crimes by Enemy

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Nationals Administering Justice in Occupied Territory,” 41 Am. J. Int’l L. 579-610, 606 (1947); and 15 Law Reports of Trials of War Criminals (United Nations War Crime Commission) 131 (1949). Therefore, by extension, the Circuit Court of the Third Circuit cannot be considered lawfully constituted and my client was willfully deprived his right to get a fair and regular trial after presenting clear and convincing evidence that the Hawaiian Kingdom continues to exist as an occupied state.

STATEMENT OF FACTS

My client is HARRIS BRIGHT, a Hawaiian national (Exhibit “1”) and “protected person” under the fourth Geneva Convention acceded to by the Hawaiian Kingdom on February 14, 2013, who’s right to a fair trial is protected under Article 147 of the fourth Geneva Convention. Ejectment proceedings on his property was instituted in the Circuit Court of the Third Circuit, Island of Hawai’i (civil no. 11-1-0389), by DEUTSCHE BANK TRUST COMPANY AMERICAS, represented by attorneys CHARLES R. PRATHER, ESQ., SOFIA M. HIROSANE, ESQ., and MICHAEL G.K. WONG, ESQ. (Exhibit “2”).

On December 29, 2011, a motion to dismiss was filed by our law firm, on behalf of our client, providing evidence of the occupation of the Hawaiian Kingdom and that the court was illegally constituted (Exhibit “3”). Our motion to dismiss was set for hearing on February 2, 2012 and came before Circuit Court Judge GREG K. NAKAMURA (Exhibit “4”). Judge NAKAMURA denied our client’s motion to dismiss without cause.

In these proceedings Judge NAKAMURA committed a war crime by willfully depriving my client, a protected person, of a fair and regular trial prescribed by the fourth Geneva Convention. The Plaintiff, DEUTSCHE BANK TRUST COMPANY AMERICAS, represented by attorneys CHARLES R. PRATHER, ESQ., SOFIA M. HIROSANE, ESQ., and MICHAEL G.K. WONG, ESQ., were complicit in these proceedings and therefore committed a war crime as accessories.

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My client has been deprived of his right to a fair and regular trial by a court that stands in direct violation of the 1899 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law. An appropriate court is a Hawaiian Kingdom court or an Article II U.S. Federal Court, which is a military court established by the President through executive order that would administer the civil and penal laws of the Hawaiian Kingdom under the international laws of occupation.

By the pleadings and oral argument in this case, the aforementioned individuals cannot claim they were unaware of the factual circumstances that established the existence of the prolonged and illegal occupation of the Hawaiian Kingdom, and there is no requirement for a legal evaluation by these perpetrators as to the existence of the prolonged and illegal occupation of the Hawaiian Kingdom, only awareness of the factual circumstances.

In the *Trial of Friedrich Flick and Five Others, United States Military Tribunal, Nuremberg*, 9 Law Reports of Trials of Law Criminals (United Nations War Crime Commission) 1, 19 (1949), the U.S. Military Tribunal stated:

...responsibility of an individual for infractions of international law is not open to question. In dealing with property located outside his own State, he must be expected to ascertain and keep within the applicable law. **Ignorance thereof will not excuse guilt but may mitigate punishment** (emphasis added).

Pursuant to Article 17 of the Rome Statute, the case is not being investigated or prosecuted by a State, which has jurisdiction over it; the case has not been investigated by a State, which has jurisdiction over it and has decided not to prosecute the persons concerned; and the persons concerned have not already been tried for conduct which is the subject of the complaint. Therefore, due to the unavailability of the Hawaiian Kingdom's national judicial system or a military government established under the laws

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of occupation by the United States, my client is unable protect his rights as a protected person or to seek redress.

Accordingly, pursuant to Article 17(3) of the Rome Statute, I respectfully request the office of the Prosecutor, with all due speed, investigate the situation in order to determine if the alleged perpetrators should be charged with the war crime specified above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dexter K. Kaiama', with a long horizontal flourish extending to the right.

Dexter K. Kaiama, Esq.

enclosures

cc: Office of the United Nations High Commissioner for Human Rights
Human Rights Council Branch-Complaint Procedure Unit
OHCHR- Palais Wilson
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland

Exhibit “1”

CERTIFICATE OF LIVE BIRTH

FILE NUMBER 151 77 002795

1. CHILD'S FIRST NAME HARRIS			MIDDLE NAME DAVID KAMEKONA			LAST NAME BRIGHT			2a. DATE OF BIRTH (MONTH, DAY, YEAR) March 28, 1977		2b. HOUR 3:40 P.M.
3. SEX Male		4a. THIS BIRTH—SINGLE, TWIN, TRIPLET, ETC. (SPECIFY) Single			4b. IF NOT SINGLE BIRTH—BORN FIRST, SECOND, THIRD (SPECIFY)			5a. COUNTY OF BIRTH Honolulu		ISLAND Oahu	
5b. CITY, TOWN, OR LOCATION OF BIRTH Honolulu			5c. INSIDE CITY LIMITS (SPECIFY YES OR NO) yes		5d. HOSPITAL—NAME (IF NOT IN HOSPITAL, GIVE STREET AND NUMBER) The Queen's Medical Center						
6a. MOTHER—FIRST NAME Lorna			MIDDLE NAME Ann Kealamokihana			MAIDEN NAME Hardey			6b. AGE (AT TIME OF THIS BIRTH) 24		6c. STATE OF BIRTH (IF NOT IN U.S.A., NAME COUNTRY) Hawaii
7a. RESIDENCE: STATE Hawaii		7b. COUNTY Maui		7c. CITY, TOWN OR LOCATION Kokomo			7d. INSIDE CITY LIMITS (SPECIFY YES OR NO) No		7e. NUMBER AND STREET RR1 Box 771 Kaupakalua Rd		
7f. MOTHER'S MAILING ADDRESS PO Box 81			STREET OR R.F.D. NO. Makawao, Maui			CITY OR TOWN Hawaii			STATE Hawaii		ZIP 96768
8a. FATHER—FIRST NAME Andrew			MIDDLE NAME Iaukea			LAST NAME Bright, III			8b. AGE (AT TIME OF THIS BIRTH) 24		8c. STATE OF BIRTH (IF NOT IN U.S.A., NAME COUNTRY) Hawaii
9a. INFORMANT—SIGNATURE <i>I certify that the stated information is true and correct to the best of my knowledge.</i> Lorna H. Bright								9b. RELATION TO CHILD Mother		9d. IS FATHER AN ACTIVE MEMBER OF U.S. ARMED FORCES? (YES OR NO) No	
10d. CERTIFIER—NAME (TYPE OR PRINT) Lockwood Young, M.D.								10c. ATTENDANT—M.D., D.O., MIDWIFE, OTHER (SPECIFY) M.D.			
10a. CERTIFIER—SIGNATURE <i>I certify that the above named child was born alive at the place and time and on the date stated above.</i> Lockwood Young M.D.								10b. DATE SIGNED (MONTH, DAY, YEAR) 3-31-77			
11a. REGISTRAR—SIGNATURE S. Ijū						11b. DATE RECEIVED BY LOCAL REGISTRAR APR - 4 1977			11c. DATE ACCEPTED BY STATE APR - 4 1977		
EVIDENCE FOR LATE FILING OR ALTERATION											

Exhibit “2”

FILED

2011 SEP 28 AM 9:19

L. GLASGOW, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

RCO HAWAII, LLLC
A Hawaii Limited Liability Law Company

CHARLES R. PRATHER #7664
SOFIA M. HIROSANE #9299
900 Fort Street Mall, Suite 800
Honolulu, Hawaii 96813
Telephone: (808) 532-0090
Fax: (808) 524-0092

Attorneys for Plaintiff
DEUTSCHE BANK TRUST COMPANY AMERICAS,
A NEW YORK CORPORATION, AS TRUSTEE FOR RALI 2007QS2

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

DEUTSCHE BANK TRUST COMPANY
AMERICAS, A NEW YORK
CORPORATION, AS TRUSTEE FOR RALI
2007QS2,

Plaintiff,

vs.

HARRIS BRIGHT, JOHN DOES 1-50; AND
JANE DOES 1-50,

Defendants.

CIVIL NO. 11-1-0389
(Other Civil Action)
(Hilo)

COMPLAINT FOR EJECTMENT;
EXHIBITS "A" – "B"; SUMMONS

COMPLAINT FOR EJECTMENT

Comes now Plaintiff DEUTSCHE BANK TRUST COMPANY AMERICAS, A NEW YORK CORPORATION, AS TRUSTEE FOR RALI 2007QS2 ("Plaintiff"), by and through its attorneys RCO Hawaii, LLLC, for cause of action against the above-named defendant, avers and alleges as follows:

1. This Court has jurisdiction over this matter pursuant to § 604-5 of the Hawaii Revised Statutes ("HRS"), as amended, and venue is proper.

I hereby certify that this is a full, true and correct copy of the original on file in this office.

L. Glasgow
Clerk, Third Circuit Court, State of Hawaii

2. Plaintiff is the fee simple owner of the property ("Property") located at 15-1467 11th Avenue, Keaau, Hawaii, 96749. Plaintiff acquired title and current ownership of the Property through a power of sale foreclosure conducted under Hawaii Revised Statutes, Sections 667-5 through 667-10, as amended, which resulted in the execution and recordation of that certain Deed or other conveyance ("Deed") in favor of the Plaintiff, as Grantee, recorded on May 27, 2011 ("Record Date") in the Office of the Assistant Registrar of the Land Court for the State of Hawaii as Document No. 4076024 which caused the issuance of a new Transfer Certificate of Title No. 4872793, which names Plaintiff as the new registered owner. A true and correct copy of the Deed is Exhibit "A" and incorporated by this reference.

3. The Property is located within the jurisdiction of this Court.

4. Defendant Harris Bright, ("Defendant"), or an occupant on his behalf, is occupying the Property without consent or permission of Plaintiff, and is wrongfully and unlawfully occupying, and withholding possession of said Property against the rights of Plaintiff.

5. On June 6, 2011, Plaintiff's counsel mailed written notice to Defendant to vacate the Property within 10 days. A true and correct copy of this written notice is attached hereto as Exhibit "B".

6. That notwithstanding said notice, Defendant, or an occupant on his behalf, is still in possession of the Property.

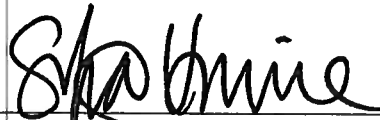
7. That Plaintiff is entitled to immediate possession of the Property under HRS § 604-5.

WHEREFORE, Plaintiff prays as follows:

A. That Judgment for Possession be entered giving Plaintiff exclusive possession of the Property.

- B. That a Writ of Possession issue forthwith directing the Sheriff or Police Officer to:
1. Remove Defendant from the Property and all persons possessing the property through Defendant;
 2. Remove from the Property all personal property; and
 3. Put Plaintiff in possession of the Property.
- C. That Plaintiff be awarded Court costs, interest, reasonable attorney's fees, and any and all other damages or charges arising out of the Defendant's unlawful occupancy of the Property and that a monetary Judgment for the total amount awarded be entered against Defendant and in the case of more than one Defendant, Judgment be entered jointly and severally against all Defendants.
- D. Such further and other relief the as Court shall deem just and proper.

DATED: Honolulu, Hawaii, September 26, 2011.



CHARLES R. PRATHER
SOFIA M. HIROSANE

Attorneys for Plaintiff
DEUTSCHE BANK TRUST COMPANY
AMERICAS, A NEW YORK
CORPORATION, AS TRUSTEE FOR
RALI 2007QS2

IN THE DISTRICT COURT OF THE THIRD CIRCUIT

PUNA DIVISION

STATE OF HAWAII

DEUTSCHE BANK TRUST COMPANY
AMERICAS, A NEW YORK
CORPORATION, AS TRUSTEE FOR RALI
2007QS2,

Plaintiff,

vs.

HARRIS BRIGHT; JOHN DOES 1-50; AND
JANE DOES 1-50

Defendant.

DC CIVIL NO. *JRC* 11 - 1 - 661

(Summary Possession)

DECLARATION OF COUNSEL

DECLARATION OF COUNSEL

I, undersigned legal counsel, make the following declaration:

1. I am an attorney admitted to practice in the State of Hawaii and I represent the Plaintiff, Deutsche Bank Trust Company Americas, A New York Corporation, As Trustee for RALI 2007QS2.
2. I have read this Complaint, including all attached exhibits, know its contents and verify that all such statements are true and correct and all exhibits are what they purport to be and are true and correct copies of the originals.
3. I declare under penalty of perjury under the laws of the State of Hawaii that the above is true and correct.

DATED: Monday, June 20, 2011 in Honolulu, Hawaii.



Blue Kaanehe, Esq.

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

11-1-0389

DEUTSCHE BANK TRUST COMPANY
AMERICAS, A NEW YORK
CORPORATION, AS TRUSTEE FOR RALI
2007QS2,

Plaintiff,

vs.

HARRIS BRIGHT, JOHN DOES 1-50; AND
JANE DOES 1-50,

Defendants.

CIVIL NO. _____
(Other Civil Action)
(Hilo)

SUMMONS

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to file with the court and serve upon Charles R. Prather, Esq. or Sofia M. Hirosane, of RCO HAWAII, LLLC, Plaintiff's Attorneys, whose address is 900 Fort Street Mall, Suite 800, Honolulu, Hawaii 96813, an answer to the Complaint for Ejectment which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint for Ejectment.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Hilo, Hawaii, SEP 28 2011

L GLASGOW (SEAL)

CLERK OF THE ABOVE-ENTITLED COURT

Exhibit “3”

AGARD & KAIAMA, LLC
Keoni K. Agard #2649
Dexter K. Kaiama #4249
Seven Waterfront Plaza
500 Ala Moana Blvd., Suite 400
Honolulu, Hawai'i 96813
Telephone: 545-2922

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Attorneys for Defendant
Harris Bright

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DEUTSCHE BANK TRUST COMPANY	)	CIVIL NO. 11-1-0389
AMERICAS, A NEW YORK CORPORATION,	)	(Foreclosure)
AS TRUSTEE FOR RALI 2007QS2,)	
	)	DEFENDANT HARRIS BRIGHT'S MOTION
Plaintiff,	)	TO DISMISS COMPLAINT AND REQUEST
	)	FOR JUDICIAL NOTICE; MEMORANDUM
vs.	)	IN SUPPORT OF MOTION; DECLARATION
	)	OF COUNSEL; EXHIBITS "1-2"; NOTICE OF
HARRIS BRIGHT; JOHN DOES 1-50; AND	)	HEARING; CERTIFICATE OF SERVICE
JANE DOES 1-50,)	
)	
Defendants.)	
)	
	)	<u>HEARING:</u>
)	
	)	DATE: <u>Feb. 2, 2012</u>
	)	TIME: <u>8:30 am</u>
	)	JUDGE: <u>Greg K. Nakamura</u>
)	
)	
)	

**DEFENDANT'S MOTION TO DISMISS COMPLAINT
AND REQUEST FOR JUDICIAL NOTICE**

COMES NOW the Defendant Harris Bright, by and through his undersigned attorneys, 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.

BRIGHT 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 motions 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 these motions 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: Honolulu, Hawai'i, December 22, 2011.



Keoni K. Agard
Dexter K. Kaiama
Attorneys for Defendant
Harris Bright

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DEUTSCHE BANK TRUST COMPANY) CIVIL NO. 11-1-0389
AMERICAS, A NEW YORK CORPORATION,)
AS TRUSTEE FOR RALI 2007QS2,) MEMORANDUM IN SUPPORT
) OF MOTION
Plaintiff,)
)
vs.)
)
HARRIS BRIGHT; JOHN DOES 1-50; AND)
JANE DOES 1-50,)
)
Defendants.)
_____)

MEMORANDUM IN SUPPORT OF MOTION

I. NATURE OF THE PROCEEDING

Plaintiff DEUTSCHE BANK TRUST COMPANY AMERICAS (hereafter "PLAINTIFF") filed a complaint in the Circuit Court of the Second Circuit against Defendant HARRIS BRIGHT (hereafter "BRIGHT") for ejection. BRIGHT asserts that he is obligated to abide by the laws of the Hawaiian Kingdom, a sovereign and independent State, and so is PLAINTIFF. §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. (emphasis added)

PLAINTIFF cannot claim relief from the Circuit Court of the Second Circuit of the State of Hawai'i because it lacks subject matter jurisdiction. An appropriate Court with subject matter jurisdiction are Courts of the Hawaiian Kingdom, not the State of Hawai'i. The Compiled Laws of the Hawaiian Kingdom (1884) provides:

§870. The Kingdom shall be divided into four judicial circuits, as at present constituted, that is to say:...The third circuit shall consist of the Island of Hawaii, whose seat of justice shall be at Hilo and Waimea.

§880. The respective Circuit Courts shall...**also have power to partition real estate; to grant writs of ejectment and of possession.**

However, in light of the illegal overthrow of the Hawaiian Kingdom government by the United States and its failure to administer Hawaiian Kingdom law and restore the Hawaiian Kingdom government pursuant to two sole executive agreements entered into between President Cleveland and Queen Lili'uokalani as are more fully explained hereafter, 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). 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," *Mercer Law Review* 44 (1992-1993): 825-879, 826. According to *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), military tribunals “are generally based upon the occupant’s customary and conventional duty to govern occupied territory and to maintain law and order.”²

II. JURISDICTION MAY BE CHALLENGED AT ANY TIME

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.” This is a case of subject-matter jurisdiction and not personal jurisdiction or immunity claims.

III. 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

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.

² See 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).

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 Prosecution, 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.*

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 attached as Exhibit "1" to Declaration of Counsel) of executive power and the *Agreement of restoration* (Exhibit "B" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "1" to Declaration of Counsel). 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.

IV. STANDARD OF REVIEW

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).

V. SUMMARY OF ARGUMENT

BRIGHT 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), that provides the legal and factual “basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state’s sovereign nature.” See Lorenzo, at 221. *The State of Hawai`i’s claim to territorial jurisdiction under HRS 701-106(1)(a) 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*.

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. U.S. constitution, article VI, clause 2, 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.”

The Supreme Court in Belmont stated that no state policy can be found to legally supersede an executive agreement between the federal government and a foreign country. The external powers of the U.S. government could be exercised without regard to State laws. The *Lili`uokalani assignment* and the *Agreement of restoration*, being executive agreements, remains binding today upon the current President as the successor in office to President Grover Cleveland. Should the Court exercise subject matter jurisdiction it would stand in direct violation of Federal law, in particular, the *Supremacy clause*.

VI. ARGUMENT: CIRCUIT COURT OF THE THIRD CIRCUIT LACKS SUBJECT MATTER JURISDICTION

In State of Hawai`i v. Lee, 90 Haw. 130, 142; 976 P.2d 444, 456 (1999), the ICA 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 on determining whether or not the Hawaiian Kingdom continues to exist as a state. See Lorenzo and Baker.

In Lorenzo, the ICA correctly cited attributes of a state’s sovereign nature 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.” See 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 (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.” (49 U.S. Stat. 3097, 3100).

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. As a result of the United States’ recognition, the Hawaiian Kingdom entered extensive treaty and diplomatic relations with other states, to include the United States of America.

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, 119 ILR 566, 581 (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.” The 9th Circuit Court, in Kahawaiola`a v. Norton, 386 F.3rd 1271 (2004), also acknowledged the Hawaiian Kingdom’s status as “a co-equal sovereign alongside the United States;” and in Doe v. Kamehameha, 416 F.3d 1025, 1048 (2005), the Court stated that, “in 1866, the Hawaiian Islands were still a sovereign kingdom.”

Having established the Hawaiian Kingdom’s internationally recognized status as an independent state in the 19th century, which met the standard of a state’s sovereign nature referred to in Lorenzo, 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.” *See* Crawford, The Creation of States in International Law 700 (2nd ed., 2006). 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 an established State.” *Id.*, 701. Professor Wright, a renowned scholar in U.S. foreign relations law,

states that, “international law distinguishes between a government and the state it governs.” *See* Wright, The Status of Germany and the Peace Proclamation, 46(2) *American Journal of International Law* 299-308, 307 (April 1952). And 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;” (Restatement (Third) Foreign Relations Law of the United States, Reporter’s Note 2, §201) and “Military occupation, whether during war or after an armistice, does not terminate statehood.” *Id.*, Reporter’s Note 3.

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, *See* Hudson, Afghanistan, Ecuador, and the Soviet Union in the League of Nations, 29 *American Journal of International Law* 109-116, 110 (1935), and the latter since 1932, *See* Hudson, The Admission of Iraq to Membership in the League of Nations, 27 *American Journal of International Law* 133-138, 133 (1933). 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. *See* Dixon, Textbook on International Law 119 (6th ed., 2007).

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” of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit “1” to Declaration of Counsel), 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” of Expert Memorandum of Dr. David Keanu attached as Exhibit “1” to Declaration of Counsel), obligated the President of the United States to restore the Hawaiian government as it was prior to the landing of U.S. troops on January 16, 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.

In Belmont, 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. In Garamendi, at 397, 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.” 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.”

In Belmont, the Court concluded that under no circumstances could a state policy be found to legally supersede an agreement between the national government and a sovereign foreign power. The external powers of the U.S. government could be exercised without regard to state laws. The Court also stated, “Plainly, the external powers of the United States are to be exercised without regard to state laws or policies,” see Belmont, at 330, *and “[i]n respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear. As to such purposes, the State of New York does not exist.”* Id.

In Pink, at 230, 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.*”

Both Belmont and Pink were reinforced by Garamendi, at 396, where the Court reiterated, that “valid executive agreements are fit to preempt state law, just as treaties are,” and that the preemptive power of an executive agreement derives from “the Constitution’s allocation of the foreign relations power to the National Government.” **All three cases affirm that the Lili`uokalani Assignment and the Agreement of restoration preempts all laws and policies of the State of Hawai`i.** In Edgar v. Mite Corporation, 457 U.S. 624, 631 (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.’”

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 13, 1894, apprised the Congress of the *Restoration agreement* with Queen Lili`uokalani, both the House of Representatives³ and Senate⁴ 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

³ 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)).

⁴ 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)).

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).

On May 4, 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 17, 1998. Representative Thomas H. Ball (D-Texas) stated on June 15, 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 deliberate attempt to do unlawfully that which can not be done lawfully. (55 Cong. 2nd Sess., 5975 (1898)) (Exhibit “C” of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit “1” to Declaration of Counsel).

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 20, 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.

...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.

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. (Exhibit “D” of Expert Memorandum of Dr. David Keanu Sai, Exhibit “3” of Dr. Sai’s Declaration, attached as Exhibit “1” of Defendant’s Declaration).

Notwithstanding the constitutional objections, the Senate passed the resolution on July 6, 1898, and President McKinley signed the joint resolution into law on July 7, 1898. Since 1900, the United States Congress has enacted additional legislation establishing a government in 1900 for the Territory of Hawai`i (31 U.S. Stat. 141), and in 1959 transformed the Territory of Hawai`i into the State of Hawai`i (73 U.S. Stat. 4). According to Born, “American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction.” See Born, International Civil Litigation in United States Courts 493 (3rd ed. 1996).

In Rose v. Himely, 8 U.S. 241, 279 (1807), the Court illustrated this view by asserting, “that the legislation of every country is territorial.” In The Apollon, 22 U.S. 362, 370 (1824), 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,” Id., and in U.S. v. Belmont, 301 U.S. 324, 332 (1937), 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.” See Kmiec, Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea, 12 Op. Off. Legal Counsel 238-263, 252 (1988).

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. §207(a), 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 responsibilities and functions of government, or of any constitutional or other internal rules or limitations.” And §115(b), 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 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 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*, (see United Nations, *Responsibility of States for International Wrongful Acts* (2001), Article 12), 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.” *Id.*, Article 14(2). 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.” *See Wright, The Control of American Foreign Relations* 235 (1922). More importantly, the U.S. “may not rely on the provisions of its internal law as justification for failure to comply with its obligation.” *See Responsibility of States*, Article 31(1).

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:

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. *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).

In Belmont, Pink, and Garamendi, the Court gave effect to the express terms of an executive agreement that extinguishes all underlying claims of relief sought under State law. The *Lili'uokalani assignment* mandates the President to administer Hawaiian Kingdom law until the Hawaiian Kingdom government can be restored as mandated by the *Agreement of restoration*. Instead, the State of Hawai'i was established by an Act of Congress in 1959, which is an encroachment on the executive power of the President, and the recognized principle of the "exclusive power of the President as the sole organ of the federal government in the field of international relations," See United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936).

The *Lili'uokalani assignment* and the *Agreement of restoration* are Federal matters under the exclusive authority of the President by virtue of Article II of the U.S. Constitution. This court cannot exercise subject matter jurisdiction without violating *Supremacy clause*, notwithstanding the general principle that there is a presumption that State courts possess concurrent jurisdiction with Federal courts over Federal matters. In Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 478 (1981), the Court stated, "the presumption of concurrent jurisdiction can be rebutted by...a clear incompatibility between state court jurisdiction and federal interests."

The *Lili'uokalani assignment* and the *Agreement of restoration* divests this Court from exercising subject matter jurisdiction over matters being exclusively Federal because the 1893 Executive Agreements binds the Federal government to administer Hawaiian Kingdom law and to restore the Hawaiian Kingdom government, notwithstanding a century long of non-compliance. Therefore, the *Lili'uokalani assignment* and the *Agreement of restoration*, being executive agreements, expressly precludes this Court from exercising subject matter jurisdiction within the territorial dominion of the Hawaiian Kingdom, and consequently the presumption of concurrent jurisdiction over Federal matters is rebuttable because of a "clear incompatibility between state court jurisdiction and federal interests." See Id.

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, Lance 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. See Bederman, David, & Hilbert, Kurt, "Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii" *American Journal of International Law* 95 (2001): 927; Dumberry, Patrick, "The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian

Kingdom's Claim to Continue as an Independent State under International Law," *Chinese Journal of International Law* 2(1)(2002): 65; Sai, David Keanu, "American Occupation of the Hawaiian State: A Century Gone Unchecked," *Hawaiian Journal of Law and Politics* 1 (Summer 2004): 46; and Sai, David Keanu, "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* 10 (Fall 2008): 165.

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*." (Exhibit "2" of Defendant's Declaration) 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. (News Release—Office of Rep. Mele Carroll, March 14, 2011, <http://MeleCarroll.wordpress.com>)

VII. REQUEST FOR JUDICIAL NOTICE

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 it is **mandatory** that a "court shall take judicial notice if requested by a party and supplied with the necessary information."

Exhibits "A," "B," "C," and "D" of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit "1" to Declaration of Counsel 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. Exhibit “2” of Defendant’s Declaration is a copy from the State of Hawai‘i House of Representatives, Twenty-sixth Legislature, 2011, which is an official government publication. Rule 902 of the Hawai‘i Rules of Evidence states that “**extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to ... (5) Official publications.**” 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.**

BRIGHT 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:

- *Lili‘uokalani assignment*, January 17, 1893, (Exhibit “A” of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit “1” to Declaration of Counsel) 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, Executive Documents on Affairs in Hawaii: 1894-95, (Government Printing Office, 443-464, 1895);
- *Agreement of restoration*, December 18, 1893, (Exhibit “B” of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit “1” to Declaration of Counsel) 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, Executive Documents on Affairs in Hawaii: 1894-95, (Government Printing Office, 1269-1270; 1283-1284, 1895);
- Statements made on the floor of the House of Representatives by Representative Thomas Ball (Exhibit “C” of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit “1” to Declaration of Counsel) are copies from the 55th Cong. 2nd Sess., 5975-5976 (1898);
- Statements made on the floor of the Senate by Senator Augustus Bacon (Exhibit “D” of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit “1” to Declaration of Counsel) are copies from the 55th Cong., 2nd Sess., 6148-6150 (1898).

- House Concurrent Resolution no. 107 (Exhibit “2” to Declaration of Counsel) is a copy from the State of Hawai‘i House of Representatives, Twenty-sixth Legislature, 2011.

VIII. CONCLUSION

The *Lili`uokalani assignment* and the *Agreement of restoration*, being executive agreements entered into under the sole authority of the President in foreign relations provides 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,” 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,” as inquired by Judge O’Scannlain in United States v. Lorenzo (1992), and by Judge Heen in Lorenzo (1994). Therefore, this Court should dismiss this case because the Circuit Court of the Third Circuit of the State of Hawai‘i lacks subject matter jurisdiction over matters exclusively Federal, in particular, under the exclusive authority of the current President to faithfully discharge his duties under the 1893 executive agreements, being the successor in office to President Grover Cleveland.

In event the Court grants or denies the instant Motion, DEFENDANT requests the Court to direct counsel for 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 under 12(b)(1), Hawaii Rules of Civil Procedure. Pursuant to Rule 52, Hawaii Rules of Civil Procedure, the Court is requested to direct counsel 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: Honolulu, HI, December 21, 2011.



Keoni K. Agard
Dexter K. Kaiama
Attorneys for Defendant
Harris Bright

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DEUTSCHE BANK TRUST COMPANY	)	CIVIL NO. 11-1-0389
AMERICAS, A NEW YORK CORPORATION,)	
AS TRUSTEE FOR RALI 2007QS2,	)	DECLARATION OF COUNSEL;
	)	EXHIBITS 1-2
Plaintiff,)	
)	
vs.)	
)	
HARRIS BRIGHT; JOHN DOES 1-50; AND)	
JANE DOES 1-50,)	
)	
Defendants.)	
_____)	

DECLARATION OF COUNSEL

I, DEXTER K. KAIAMA, declare under penalty of law that the following is true and correct.

1. Attached to this Declaration as Exhibit "1" is a true and correct copy of the Declaration of Dr. Keanu Sai and exhibits attached thereto.
2. Attached as Exhibit "2" is a true and correct copy of House Concurrent Resolution no. 107 (House of Representatives, Twenty-Sixth Legislature, 2011, State of Hawai'i).

Dated: Honolulu, Hawai'i, December 21, 2011.



Dexter K. Kaiama

Exhibit “1”

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DEUTSCHE BANK TRUST COMPANY	)	CIVIL NO. 11-1-0389
AMERICAS, A NEW YORK CORPORATION,)	
AS TRUSTEE FOR RALI 2007QS2,	)	DECLARATION OF DAVID KEANU
	)	SAI, PH.D.; EXHIBITS "1-5"
Plaintiff,)	
)	
vs.)	
)	
HARRIS BRIGHT; JOHN DOES 1-50; AND)	
JANE DOES 1-50,)	
)	
Defendants.)	
_____)	

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 (November 28, 2010)."
5. Attached herein as Exhibit "A" of Exhibit "3" is a true and correct copy of the *Lili'uokalani assignment* through exchange of diplomatic notes, 53rd Congress, Executive Documents on Affairs in Hawaii: 1845-95, (Government Printing Office, U.S. State Department, 1895), p. 445-464.
6. Attached herein as Exhibit "B" of Exhibit "3" is a true and correct copy of the *Agreement of restoration* through exchange of diplomatic notes, 53rd Congress, Executive Documents on Affairs in Hawaii: 1845-95, (Government Printing Office, U.S. State Department, 1895), p. 1269-1284.

7. Attached herein as Exhibit “C” of Exhibit “3” is a true and correct copy of statements made on the floor of the House of Representatives by Representative Thomas Ball, 55th Cong. 2nd Sess., 5975-5976 (1898).
8. Attached herein as Exhibit “D” of Exhibit “3” is a true and correct copy of statements made on the floor of the Senate by Senator Augustus Bacon, 55th Cong. 2nd Sess., 6148-6150.
9. I am qualified and competent to testify as an expert witness in matters concerning my “Expert Memorandum on the Legal Continuity of the Hawaiian Kingdom as an Independent and Sovereign State (November 28, 2010)” attached herein as Exhibit “3.”
10. My doctoral dissertation and law reviewed article published in the *Journal of Law and Social Challenges*, (San Francisco School of Law), Vol. 10 (Fall 2008), p. 68-133, centers on two executive agreements entered into between President Grover Cleveland of the United States and Queen Lili‘uokalani of the Hawaiian Kingdom. The first executive agreement was a temporary and conditional assignment of executive power to the President of the United States by Queen Lili‘uokalani under threat of war, and the second executive agreement was an agreement of restoration of the Hawaiian Kingdom government whereby the Queen thereafter would grant amnesty to the insurgents.
11. On January 17, 1893, Queen Lili‘uokalani temporarily and conditionally assigned executive power she was constitutionally vested with under Article 31 of the Hawaiian constitution to the President of the United States under threat of war (attached herein as Exhibit “A” of Exhibit “3”, at 461), to wit:

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 authority which I claim as the constitutional sovereign of the Hawaiian Islands.

12. It wasn't until President Grover Cleveland was inaugurated on March 4, 1893, that the assignment was accepted and a Presidential investigation was initiated to investigate the overthrow of the Hawaiian Kingdom government. The acknowledgment of the assignment was noted in a dispatch of special instructions by Secretary of State Walter Gresham to newly commissioned Minister Plenipotentiary Albert Willis dated October 18, 1893, who was preparing to depart for the Hawaiian Kingdom after the investigation was completed (attached herein as Exhibit "A" of Exhibit "3", Document no. 4, at 463-64), to wit:

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.

13. The Presidential investigation concluded that the Hawaiian government was to be restored, and in the same aforementioned dispatch to Minister Plenipotentiary Willis dated October 18, 1893, Secretary of State Gresham directed Willis (*Id.*, at 464), to wit:

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.

14. After nearly a month of negotiations with U.S. Minister Willis, Queen Lili'uokalani agreed to the

President's conditions of restoration and on December 18, 1893, she signed the following declaration (attached herein as Exhibit "B" of Exhibit "3", Document no. 16, at 1269-70), to wit:

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

15. On December 20, 1893, Minister Willis dispatched the signed declaration to the Secretary of State, and in a dispatch to Willis dated January 12, 1893, Gresham acknowledged the Queen's declaration of acceptance of the conditions (Id., 1283-84), to wit:

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.

...In the mean time, 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.

16. These agreements between the President and the Queen are called sole-executive agreements, and according to the U.S. Supreme Court in *United States v. Belmont*, 301 U. S. 324 (1937), *United States v. Pink*, 315 U.S. 203 (1942), *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003), sole executive agreements do not require ratification by the Senate or approval by Congress to have the force and effect of a treaty. In *American Insurance Association v. Garamendi*, 539 U.S. 396, 398 (2003), the U.S. Supreme Court stated, "valid executive agreements are fit to preempt state law, just as treaties are."

17. In *U.S. v. Belmont*, U.S. Attorney Lamar Hardy for Southern District of New York relied on a 1933 sole-executive agreement between President Franklin D. Roosevelt and the Soviet Union's People's Commissar for Foreign Relations Maxim M. Litvinov, which is similar in form to the *Lili'uokalani assignment* and the *Agreement of restoration*. The purpose of the executive agreement was that it was an assignment that released and assigned to the United States all amounts to which the Soviet Government was entitled to within the United States as the successor to former governments of Russia.
18. Attached herein as Exhibit "4" is a true and correct copy of the amended Complaint (excepting Exhibits "1", "2", "4", "5" and "6"), filed by United States Attorney Lamar Hardy in the United States District Court for the Southern District of New York on April 3, 1936. The amended Complaint has a transcription of the sole-executive agreement identified as Exhibit "3." The transcription of the agreement is from the government publication of *Foreign Relations of the United States*, Diplomatic Papers, The Soviet Union: 1933-1939, (Government Printing Office, 1952), p. 35-36, published under the Seal of U.S. Department of State.
19. Attached herein as Exhibit "5" is a true and correct copy of the U.S.-Soviet sole-executive agreement from the government publication of *Foreign Relations of the United States*, Diplomatic Papers, The Soviet Union: 1933-1939, (Government Printing Office, 1952), p. 35-36.
20. In similar fashion, the *Lili'uokalani assignment* and the *Agreement of restoration*, being sole-executive agreements as well, are also from the government publication of *Foreign Relations of the United States*. In both cases, the Hawaiian and Soviet executive agreements are published under the Seal of U.S. Department of State, and as such these copies are self-authenticating pursuant to Rule 902(5) of the Hawai'i Rules of Evidence.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND
CORRECT.

DATED: Kane'ohē, O'ahu, Hawai'i, December 21, 2011.

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

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 Hānoa

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

Viggo D. Hinman
Chancellor

Allan R. London
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, Kona, 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>.

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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>.

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“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.

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- “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 to 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

M E S S A G E .

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 on 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,
Minister, Honolulu:

WASHINGTON, *January 12, 1894.*

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:

CONTAINING

THE PROCEEDINGS AND DEBATES

OF THE

FIFTY-FIFTH CONGRESS, SECOND SESSION.

VOLUME XXXI.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1898.

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:

CONTAINING

THE PROCEEDINGS AND DEBATES

OF THE

FIFTY-FIFTH CONGRESS, SECOND SESSION.

VOLUME XXXI.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1898.

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 premit 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.

Exhibit “4”

You will please take notice that a copy of the return is a copy was this day duly entered in the within entitled action, in the office of the Clerk of the

Dated, N. Y. , 1936

Yours, etc,

L. S. Attorney,
Attorney for Defendants.

To

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs

MORAN BELMONT and ELLIOTT R. BELMONT as Executors of the last will and Testament of August Belmont Defendants.

AMENDED COMPLAINT

Attorney for

LAMAR BARDY

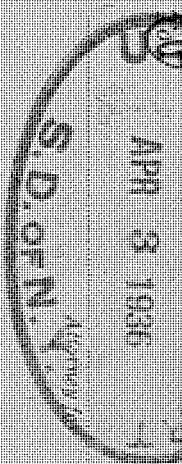
United States Attorney,
Attorney for Plaintiff.

Service of a copy of the within is hereby admitted.

New York, April 2, 1936

WILLIAM & TITEL

Attorneys



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
 UNITED STATES OF AMERICA :
 :
 Plaintiff, :
 :
 -against- :
 :
 MORGAN BELMONT and ELEANOR R. :
 BELMONT, as Executors of the :
 Last Will and Testament of :
 August Belmont, deceased, :
 :
 Defendants :
 ----- X

AMENDED COMPLAINT
Law 63/274

The plaintiff, United States of America, by its attorney, HARAR HARDY, United States Attorney for the Southern District of New York, for its complaint herein, alleges on information and belief:

I. The United States of America, hereinafter called the plaintiff, is a corporation sovereign and body politic.

II. Morgan Belmont and Eleanor R. Belmont, the executors of the last will and testament of August Belmont, deceased, hereinafter called the defendants, are residents of the State of New York and of the Southern District of New York.

III. Kompania Petrogradskago Metallicheskago Zavoda, sometimes styled in the German language "Petrograder Metal Fabrik" and sometimes styled in the English language "Petrograd Metal Works", hereinafter called the Metal Company, was prior to 1918 a corporation organized and existing under the laws of Russia with a fixed capital in excess of 1,000,000 rubles, which conducted a metallurgical and metal manufacturing business enterprise in Russia.

IV. Prior to 1918 and up to the date of his death, on or about December 10, 1924, August Belmont was a general partner in a partnership conducting a private banking and investment business in the City of New York under the firm name and style of August Belmont & Co., hereinafter called the Belmont firm.

V. Prior to 1918, the Metal Company had on deposit with the Belmont firm certain sums of money which remained on deposit with the Belmont firm thereafter and the amount of such sums on deposit on December 10, 1924 was \$25,438.48, for the repayment of which no demand had been made prior to that date. The defendants' testator was jointly liable together with the other partners of the Belmont firm for the repayment of these sums.

VI. In 1918 or thereabouts, duly enacted laws, decrees, enactments and orders of the Russian State, including the decree of June 28, 1918, on the nationalization of the largest industrial enterprises, a certified photostatic copy of which is annexed hereto, marked Exhibit 1 and made a part hereof as if set forth in full herein, and a certified copy of a translation of which is annexed hereto, marked Exhibit 2 and made a part hereof as if set forth in full herein, dissolved, terminated and liquidated certain Russian corporations and organizations and nationalized and appropriated the assets of such corporations.

VII. The Metal Company which prior to 1918, as hereinbefore alleged, was a corporation organized and existing under the laws of the State of Russia, with a fixed capital in excess of 1,000,000 rubles, by said duly enacted laws, decrees, enactments and orders of the Russian state, including the said decree of June 28, 1918

alleged in paragraph VI of this amended complaint, was dissolved, terminated and liquidated, and all of its property and assets of every kind and wherever situated, including the aforesaid cash deposit account with the Belmont firm in New York were nationalized and appropriated.

VIII. As a result of said duly enacted laws, decrees, enactments, and orders of the Russian State, the cash deposit account formerly standing to the credit of the Metal Company with the Belmont firm became the property of the Russian State, and remained the property of the Russian State at all times up to November 16, 1933.

IX. After the death of the aforesaid August Belmont, and on or about December 29, 1924, the Surrogate's Court of Nassau County issued letters testamentary to Morgan Belmont and Eleanor R. Belmont, the defendants herein, as executors of the last will and testament of August Belmont, deceased. Said defendants duly entered upon the performance of their duties as such executors, and have continued in the performance of such duties up to the present time.

X. On or about November 16, 1933, by an executive agreement contained in an exchange of diplomatic correspondence, a copy of which is annexed hereto as Exhibit 3 and made a part hereof as if set forth in full herein, the Union of Soviet Socialist Republics released and assigned to the plaintiff herein all amounts admitted to be due or that may be found to be due to the Union of Soviet Socialist Republics from American nationals. The said executive agreement released and assigned to the plaintiff the aforementioned cash deposit account formerly standing to the credit of the Metal Company with the Belmont firm and since November 16, 1933 plaintiff has been and now is the sole and exclusive owner entitled to

immediate possession of the aforesaid cash deposit account. A letter from the Attorney General of the United States, dated September 17, 1934, a reply thereto by the Secretary of State, and a letter from the Acting Secretary of State to the Attorney General, dated October 27, 1934, all of which are annexed as Exhibits 4, 5 and 6, and made a part hereof as if set forth in full herein, disclose the purpose of the executive agreement and assignment of November 16, 1933 to assign and release to the plaintiff all amounts and assets in the United States formerly owned by the Union of Soviet Socialist Republics, including the aforesaid cash deposit account formerly standing to the credit of the Metal Company with the Belmont firm.

XI. On or about June 18, 1935, the plaintiff demanded from the defendants the payment to the plaintiff of the sum of \$25,438.48, formerly standing to the credit of the Metal Company with the Belmont firm. The defendants have failed to comply with this demand up to the present time.

WHEREFORE, the plaintiff demands judgment against the defendants herein for the sum of \$25,438.48, with interest at 6% from June 18, 1935 to the date of judgment, together with the costs and disbursements of this action.

Lamar Hardy
LAMAR HARDY,
United States Attorney,
Southern District of New York,
Attorney for Plaintiff,
Office and Post Office Address:
United States Court House,
Foley Square,
Borough of Manhattan,
City of New York.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:
SOUTHERN DISTRICT OF NEW YORK)

EDWARD J. ENNIS, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York, and as such has charge of the above entitled action; that he has read the foregoing amended complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true; that the reason this verification is made by him and not by the plaintiff is that the plaintiff is a corporation sovereign; that the sources of his information and the grounds of his belief are records of this case on file in the office of the United States Attorney for the Southern District of New York.

Sworn to before me this
31st day of March, 1936.

A. Chankalian

Edward J. Ennis
Edward J. Ennis

EXHIBIT 3

(Copied from photostat certified by Department of State, on file in office of the United States Attorney.)

Washington,
November 16, 1933.

My dear Mr. President:

Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counterclaims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claims with respect to:

(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof.

I am, my dear Mr. President,

Very sincerely yours,

MAXIM M. LITVINOV,
People's Commissar for Foreign Affairs
Union of Soviet Socialist Republics

Mr. Franklin D. Roosevelt,
President of the United States of America,
The White House.

EXHIBIT 3 Annexed to Complaint

(copied from photostat certified by Department of State, on file in office of the United States Attorney).

THE WHITE HOUSE
Washington

November 16, 1933.

My dear Mr. Litvinov:

I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

"The Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of the their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claim with respect to:

(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or

(b) acts done or settlements made by or with the Government of the United States or public officials in the United States, or its nationals, relating to property, credits or obligations of any Government of Russia or nationals thereof."

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am, my dear Mr. Litvinov,

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

Mr. Maxim M. Litvinov,
People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics."

EXHIBIT 3 Annexed to Complaint.

Exhibit “5”

Foreign Relations
of the
United States
Diplomatic Papers

The Soviet Union
1933-1939



United States
Government Printing Office
Washington : 1952

countries, only in the case of business and production secrets and in the case of the employment of forbidden methods (bribery, theft, fraud, etc.) to obtain such information. The category of business and production secrets naturally includes the official economic plans, in so far as they have not been made public, but not individual reports concerning the production conditions and the general conditions of individual enterprises.

“The Union of Soviet Socialist Republics has also no reason to complicate or hinder the critical examination of its economic organization. It naturally follows from this that every one has the right to talk about economic matters or to receive information about such matters in the Union, in so far as the information for which he has asked or which has been imparted to him is not such as may not, on the basis of special regulations issued by responsible officials or by the appropriate state enterprises, be made known to outsiders. (This principle applies primarily to information concerning economic trends and tendencies.)”

711.61/343%

*The Soviet Commissar for Foreign Affairs (Litvinov) to
President Roosevelt*

WASHINGTON, November 16, 1933.

MY DEAR MR. PRESIDENT: Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claim with respect to:

- (a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Re-

- publics or its nationals may have had or may claim to have an interest; or,
- (b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof.

I am [etc.]

MAXIM LITVINOFF

711.61/343%

*President Roosevelt to the Soviet Commissar for Foreign Affairs
(Litvinov)*

WASHINGTON, November 16, 1933.

MY DEAR MR. LITVINOV: I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

[Here follows quotation of statement made by Mr. Litvinov in his note printed *supra*.]

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am [etc.]

FRANKLIN D. ROOSEVELT

711.61/343%

*The Soviet Commissar for Foreign Affairs (Litvinov) to
President Roosevelt*

WASHINGTON, November 16, 1933.

MY DEAR MR. PRESIDENT: I have the honor to inform you that, following our conversations and following my examination of certain documents of the years 1918 to 1921 relating to the attitude of the American Government toward the expedition into Siberia, the operations there of foreign military forces and the inviolability of the territory of the Union of Soviet Socialist Republics, the Government of the Union of Soviet Socialist Republics agrees that it will waive any and all claims of whatsoever character arising out of activities of military forces of the United States in Siberia, or assistance to military forces in Siberia subsequent to January 1, 1918, and that such claims shall be regarded as finally settled and disposed of by this agreement.

I am [etc.]

MAXIM LITVINOFF

Exhibit “2”

HOUSE CONCURRENT RESOLUTION

ESTABLISHING A JOINT LEGISLATIVE INVESTIGATING COMMITTEE TO INVESTIGATE THE STATUS OF TWO EXECUTIVE AGREEMENTS ENTERED INTO IN 1893 BETWEEN UNITED STATES PRESIDENT GROVER CLEVELAND AND QUEEN LILI'UOKALANI OF THE HAWAIIAN KINGDOM, CALLED THE LILI'UOKALANI ASSIGNMENT AND THE AGREEMENT OF RESTORATION.

1 WHEREAS, on December 19, 1842, United States President John
2 Tyler recognized the Hawaiian Kingdom as an independent and
3 sovereign State, extended full and complete diplomatic
4 recognition to the Hawaiian Government, and entered into
5 treaties and conventions with the Hawaiian government in 1849,
6 1875, and 1887; and

7
8 WHEREAS, on January 14, 1893, John L. Stevens (hereinafter
9 referred to as the "United States minister"), the United States
10 minister plenipotentiary assigned to the Hawaiian Kingdom
11 government, conspired with a small group of insurgents of
12 diverse nationalities to overthrow the Hawaiian Kingdom
13 government; and

14
15 WHEREAS, in pursuance of the conspiracy, the United States
16 Minister and naval representatives of the United States caused
17 armed naval forces to invade the Hawaiian Kingdom on January 16,
18 1893, and to position themselves near government buildings and
19 Iolani Palace in order to provide protection to the insurgents;
20 and

21
22 WHEREAS, on the afternoon of January 17, 1893, this small
23 group of insurgents declared themselves to be a Provisional
24 Government; and

25
26 WHEREAS, the United States minister thereupon extended
27 diplomatic recognition to the insurgents in violation of



1 treaties between the United States and the Hawaiian Kingdom and
2 in violation of international law; and
3

4 WHEREAS, because the police force was unable to apprehend
5 the insurgents for violating the law of treason without the risk
6 of bloodshed between the police and the United States troops,
7 Queen Lili'uokalani issued the following protest temporarily,
8 conditionally yielding her executive power to the United States
9 government:

10
11 "I Liliuokalani, by the Grace of God and under
12 the Constitution of the Hawaiian Kingdom, Queen, do
13 hereby solemnly protest against any and all acts done
14 against myself and the Constitutional Government of
15 the Hawaiian Kingdom by certain persons claiming to
16 have established a Provisional Government of and for
17 this Kingdom.
18

19 That I yield to the superior force of the United
20 States of America whose Minister Plenipotentiary, His
21 Excellency John L. Stevens, has caused United States
22 troops to be landed at Honolulu and declared that he
23 would support the Provisional Government.
24

25 Now to avoid any collision of armed forces, and
26 perhaps the loss of life, I do this under protest and
27 impelled by said force yield my authority until such
28 time as the Government of the United States shall,
29 upon facts being presented to it, undo the action of
30 its representatives and reinstate me in the authority
31 which I claim as the Constitutional Sovereign of the
32 Hawaiian Islands.
33

34 Done at Honolulu this 17th day of January, A.D.
35 1893"; and
36

37 WHEREAS, under Article 31 of the Constitution of the
38 Kingdom of Hawaii, as the constitutional monarch of the
39 Hawaiian islands, the Queen was vested with the executive
40 power to faithfully execute and administer Hawaiian law:
41 "To the King belongs the Executive power"; and
42

43 WHEREAS, on March 9, 1893, President Grover Cleveland
44 accepted the temporary and conditional assignment of executive



1 power from the Queen and investigated the circumstances of the
2 overthrow of the Hawaiian Kingdom government; and
3

4 WHEREAS, on October 18, 1893, the investigation concluded
5 that the United States violated international law and the
6 Hawaiian Kingdom government must be restored to its status
7 before the landing of United States troops; and
8

9 WHEREAS, negotiations for settlement and restoration took
10 place between Queen Lili'uokalani and United States minister
11 plenipotentiary, Albert Willis, between November 13, 1893, and
12 December 18, 1893, at the United States Embassy in Honolulu; and
13

14 WHEREAS, a settlement was reached on December 18, 1893,
15 whereby Queen Lili'uokalani signed the following declaration
16 that was dispatched to the United States State Department by the
17 United States minister on December 20, 1893:
18

19 "I, Liliuokalani, in recognition of the high
20 sense of justice which has actuated the President of
21 the United States, and desiring to put aside all
22 feelings of personal hatred or revenge and to do what
23 is best for all the people of these Islands, both
24 native and foreign born, do hereby and herein solemnly
25 declare and pledge myself that, if reinstated as the
26 constitutional sovereign of the Hawaiian Islands, that
27 I will immediately proclaim and declare,
28 unconditionally and without reservation, to every
29 person who directly or indirectly participated in the
30 revolution of January 17, 1893, a full pardon and
31 amnesty for their offenses, with restoration of all
32 rights, privileges, and immunities under the
33 constitution and the laws which have been made in
34 pursuance thereof, and that I will forbid and prevent
35 the adoption of any measures of proscription or
36 punishment for what has been done in the past by those
37 setting up or supporting the Provisional Government.
38

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



1
2 I furthermore solemnly pledge myself and my
3 Government, if restored, to assume all the obligations
4 created by the Provisional Government, in the proper
5 course of administration, including all expenditures
6 for military or police services, it being my purpose,
7 if restored, to assume the Government precisely as it
8 existed on the day when it was unlawfully overthrown.

9
10 Witness my hand this 18th of December, 1893"; and

11
12 WHEREAS, there exist two agreements:

- 13
14 (1) The Lili'uokalani Assignment, whereby President Grover
15 Cleveland accepted the obligation of administering
16 Hawaiian Law in an assignment of executive power; and
17
18 (2) The Agreement of Restoration, whereby the Queen agreed
19 to grant amnesty after return of executive power and
20 restoration of the government; and

21
22 WHEREAS, President Cleveland and his successors in office
23 have violated these agreements by not administering Hawaiian
24 Kingdom Law and not restoring the Hawaiian Kingdom government;
25 and

26
27 WHEREAS, for the past one hundred eighteen years the Office
28 of President has retained the temporary and conditional
29 assignment of Hawaiian executive power from the Queen; and

30
31 WHEREAS, these agreements are called sole executive
32 agreements under United States constitutional law and the basis
33 of a federal lawsuit in Washington, D.C., filed by Dr. David
34 Keanu Sai against President Barack Obama, Secretary of State
35 Hillary Clinton, Secretary of Defense Robert Gates, Admiral
36 Robert Willard, and Governor Linda Lingle (case no. 1:10-CV-
37 00899CKK) on June 1, 2010; and

38
39 WHEREAS, on November 13, 2010, the Association of Hawaiian
40 Civic Clubs at its 51st Convention at Keauhou, Island of Hawaii,
41 unanimously passed Resolution No. 10-15, "Acknowledging Queen
42 Lili'uokalani's Agreements with President Grover Cleveland to
43 Execute Hawaiian Law and to Restore the Hawaiian Government";
44 and



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WHEREAS, under the Supremacy Clause of the United States Constitution, "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, any Thing in the Constitution or Laws of any State to the contrary notwithstanding"; and

WHEREAS, the United States Supreme Court declared in United States v. Belmont, 301 U.S. 324 (1937), that executive agreements arising out of the President's sole authority over foreign relations does not require ratification by the Senate or the approval of Congress, and has the force and effect of a treaty; and

WHEREAS, statutes enacted by the Legislature of the State of Hawaii that conflict with valid executive agreements would be considered void under the Supremacy Clause; and

WHEREAS, a joint legislative investigating committee would settle the issue of whether certain statutes enacted by the Hawaii State Legislature violate the United States Constitution; and

WHEREAS, section 21-3, Hawaii Revised Statutes, authorizes the establishment of a legislative investigating committee by resolution, and Rule 14 of the Rules of the House of Representatives and Rule 14(3) of the Rules of the Senate allow for the establishment of special committees; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-sixth Legislature of the State of Hawaii, Regular Session of 2011, the Senate concurring, that:

- (1) The Legislature hereby establishes a joint legislative investigating committee to investigate the status of two executive agreements entered into between President Grover Cleveland of the United States and Queen Lili'uokalani of the Hawaiian Kingdom in 1893, called the Lili'uokalani Assignment and the Agreement of Restoration;
- (2) The purpose and duties of the joint investigating committee shall be to inquire into the status of the

1 executive agreements by holding meetings and hearings
2 as necessary, receiving all information from the
3 inquiry, and submitting a final report to the
4 Legislature;

5
6 (3) The joint investigating committee shall have every
7 power and function allowed to an investigating
8 committee under the law, including without limitation
9 the power to:

10
11 (A) Adopt rules for the conduct of its proceedings;

12
13 (B) Issue subpoenas requiring the attendance and
14 testimony of the witnesses and subpoenas duces
15 tecum requiring the production of books,
16 documents, records, papers, or other evidence in
17 any matter pending before the joint investigating
18 committee;

19
20 (C) Hold hearings appropriate for the performance of
21 its duties, at times and places as the joint
22 investigating committee determines;

23
24 (D) Administer oaths and affirmations to witnesses at
25 hearings of the joint investigating committee;

26
27 (E) Report or certify instances of contempt as
28 provided in section 21-14, Hawaii Revised
29 Statutes;

30
31 (F) Determine the means by which a record shall be
32 made of its proceedings in which testimony or
33 other evidence is demanded or adduced;

34
35 (G) Provide for the submission, by a witness's own
36 counsel and counsel for another individual or
37 entity about whom the witness has devoted
38 substantial or important portions of the
39 witness's testimony, of written questions to be
40 asked of the witness by the chair; and

41
42 (H) Exercise all other powers specified under chapter
43 21, Hawaii Revised Statutes, with respect to a
44 joint investigating committee; and



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BE IT FURTHER RESOLVED that the joint investigating committee shall consist of the following ten members:

- (1) The Chairperson of the House Committee on Finance;
- (2) The Chairperson of the House Committee on Water, Land, and Ocean Resources;
- (3) The Chairperson of the House Committee on Hawaiian Affairs;
- (4) One member of the majority leadership from the House of Representatives who shall be appointed by the Speaker of the House of Representatives;
- (5) One member of the minority leadership from the House of Representatives who shall be appointed by the House Minority Leader;
- (6) The Chairperson of the Senate Ways and Means Committee;
- (7) The Chairperson of the Senate Committee on Water, Land, and Agriculture;
- (8) The Chairperson of the Senate Hawaiian Affairs Committee;
- (9) One member of the majority leadership from the Senate who shall be appointed by the President of the Senate; and
- (10) One member of the minority leadership from the Senate who shall be appointed by the Senate Minority Leader; and

BE IT FURTHER RESOLVED that the joint investigating committee shall submit its findings and recommendations to the Legislature no later than twenty days prior to the convening of the Regular Session of 2012 and shall dissolve upon submission of its report; and

1 BE IT FURTHER RESOLVED that certified copies of this
2 Concurrent Resolution be transmitted to the President of the
3 United States, members of Hawaii's congressional delegation, the
4 Governor, the President of the Hawaii State Senate, the Speaker
5 of the Hawaii State House of Representatives, the Director of
6 Finance, the Attorney General, and the Auditor.

7
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9

OFFERED BY: Mel Carroll

MAR 11 2011



IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

WELLS FARGO BANK, N.A. AS TRUSTEE	)	CIVIL NO. 11-1-0389
FOR THE CERTIFICATE HOLDERS OF BANC)	
OF AMERICA ALTERNATIVE LOAN TRUST	)	NOTICE OF HEARING MOTION
2005-10, MORTGAGE PASSTHROUGH)	
CERTIFICATES, SERIES 2005-10,)	
)	
Plaintiff,)	
)	
vs.)	
)	
HOLLY MARIE CRANE, and JOHN AND)	
MARY DOES 1-10,)	
)	
Defendants.)	
)	
_____)	

NOTICE OF HEARING MOTION

NOTICE IS HEREBY GIVEN that Defendant's Motion to Dismiss Complaint, shall come on for hearing before the Honorable Presiding Judge of the above-entitled Court, in Circuit Court of the Third Circuit his/her courtroom at Hale Kaulike, Courtroom 3E, Hilo, Hawai'i, on Feb. 2, 2012 at 8:30 am or as soon thereafter as Defendant can be heard.

Dated: Honolulu, Hawai'i, December 22, 2011.



Keoni K. Agard
Dexter K. Kaiama
Attorneys for Defendant
Harris Bright

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
CHARLES R. PRATHER, ESQ.
900 Fort Street Mall, Suite 800
Honolulu, HI 96813

Attorneys for Plaintiff
DEUTSCHE BANK TRUST COMPANY AMERICAS

Dated: Honolulu, Hawai'i, December 22, 2011.

A handwritten signature in black ink, appearing to read 'Keoni K. Agard', written over a horizontal line.

Keoni K. Agard
Dexter K. Kaiama
Attorneys for Defendant
Harris Bright

Exhibit “4”

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DEUTSCHE BANK TRUST)
COMPANY AMERICAS,)
)
Plaintiff,)
)
vs.)
HARRIS BRIGHT, et al.,)
)
Defendants.)

CIVIL NO. 11-1-389

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

before the HONORABLE JUDGE GREG K. NAKAMURA, Judge
presiding, First Division, on Thursday, February 2,
2012. Motion to Dismiss Complaint and for Judicial
Notice.

APPEARANCES:

For Plaintiff: MICHAEL G. K. WONG, ESQ.
RCO Hawaii, LLLC
900 Fort Street Mall, #800
Honolulu, Hawai'i 96813

For Defendant DEXTER K. KAIAMA, ESQ.
Harris Bright 500 Ala Moana Blvd., #400
Honolulu, Hawai'i 96813

REPORTED BY: SABINA WERY, CSR 337

SABINA WERY, CSR 337, RPR
Official Court Reporter
Third Circuit Court, State of Hawai'i

1 THURSDAY, FEBRUARY 2, 2012

A.M. SESSION

2 ---000---

3 THE CLERK: Civil Number 11-1-389,
4 Deutsche Bank National Trust Americas versus Harris
5 Bright, et al. Motion to Dismiss Complaint and for
6 Judicial Notice.

7 MR. WONG: Good morning, Your Honor.
8 Michael wong on behalf of the plaintiff.

9 MR. KAIAMA: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. KAIAMA: Dexter Kaiama on behalf of
12 Mr. Bright. Your Honor, Mr. Bright is present in
13 the courtroom as well.

14 THE COURT: Good morning.

15 HARRIS BRIGHT: Good morning, Your
16 Honor.

17 THE COURT: Okay. So, Mr. Kaiama,
18 anything else to add with respect to the motion?

19 MR. KAIAMA: Yes. Yes, Your Honor. I
20 will -- I will try to be brief. We did make the
21 request and the first order of business is making
22 the request that the Court take judicial notice of
23 the documents referred to in the motion itself, that
24 being what we referred to as the Liliuokalani
25 assignment and the agreement of restoration. Those

SABINA WERY, CSR 337, RPR
Official Court Reporter
Third Circuit Court, State of Hawai'i

1 were attached as Exhibit A to the expert memorandum
2 of Keanu Sai as well as, uh, the statements made by
3 Representative Thomas Ball and Senator Augustin
4 Bacon -- August -- Augustus, excuse me. They were
5 attached as Exhibits C and D to the expert
6 memorandum opinion of Doctor Keanu Sai as well as
7 House Concurrent Resolution Number 107, uh, which
8 was attached as Exhibit 2 to my declaration.

9 Your Honor, I believe we did provide the
10 Court with the, uh, appropriate authority for the
11 taking of judicial notice. We received no
12 opposition to that, and we'd ask that as a predicate
13 to our argument that the Court take judicial notice
14 of these documents.

15 THE COURT: Mr. Wong?

16 MR. WONG: Your Honor, I would object to
17 the Court taking judicial notice of the documents
18 Mr. Kaiama is referring to. I don't think it
19 complies with the rule. He cites Rule 201D, uh, and
20 I don't think those documents fall under that.

21 Uh, he's asking the Court to take
22 judicial notice of something that is in dispute.
23 It's a political question. Uh, I ask the Court not
24 take judicial notice.

25 THE COURT: okay, the court will take

1 judicial notice of the documents, not necessarily
2 take into -- uh, accept as true the contents of the
3 documents but just judicial notice of the documents.

4 MR. KAIAMA: Thank you, Your Honor. Uh,
5 that being said, Your Honor, again, I would -- I
6 will be brief.

7 Our motion does speak for itself and --
8 and, uh, the, uh, the plaintiff having had the
9 opportunity but failing to provide any documents or
10 affidavits which would rebut the evidence that now
11 has been judicially noticed, Your Honor, we would
12 ask that the Court dismiss plaintiff's complaint
13 pursuant to U.S. versus Belmont, U.S. versus Pink,
14 and the Supreme Court decision in Garamendi.

15 Thank you, Your Honor.

16 THE COURT: Mr. Wong?

17 MR. WONG: Your Honor, uh, taking
18 judicial notice that those documents exist doesn't,
19 uh, prove anything.

20 Uh, that's all I got, Your Honor.

21 THE COURT: Okay. So Court will deny
22 the motion. Court believes that it has jurisdiction
23 under Article 6 of the Hawaii Constitution and under
24 HRS Section 603-21 point 5.

25 And, uh, Mr. Wong, please submit a form

SABINA WERY, CSR 337, RPR
Official Court Reporter
Third Circuit Court, State of Hawai'i

1 of the order.

2 MR. KAIAMA: Thank you, Your Honor.
3 Just a matter of clarification and I think we
4 addressed it in the case previously before the
5 Court, uh, am I allowed to file Mr. Bright's answer
6 to the complaint within 20 days after the filing of
7 the order?

8 THE COURT: Uh, that's my general
9 practice.

10 Do you have any objection to that, Mr.
11 Wong?

12 MR. WONG: No.

13 THE COURT: Okay.

14 MR. WONG: If he needs more time, he can
15 call us, too.

16 THE COURT: okay.

17 MR. KAIAMA: okay.

18 THE COURT: All right. So please set
19 forth the time frame in the form of the order.

20 MR. KAIAMA: Thank you, Your Honor.

21 MR. WONG: Thank you, Your Honor.

22 THE BAILIFF: All rise. Court is in
23 recess.

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C E R T I F I C A T E

STATE OF HAWAI'I)
)
COUNTY OF HAWAI'I)

I, SABINA WERY, CSR 337, RPR, and an
Official Court Reporter for the Third Circuit Court,
State of Hawai'i, do hereby certify that the
foregoing comprises a full, true, and correct
transcription of my stenographic notes taken in the
above-entitled cause.

Dated this 13th day of February, 2012.

OFFICIAL COURT REPORTER


SABINA WERY

SABINA WERY, CSR 337, RPR
Official Court Reporter
Third Circuit Court, State of Hawai'i

Attachment ‘I’



Our reference: OTP-CR-63/13

The Hague, 4 March 2013

Dear Sir, Madam

The Office of the Prosecutor of the International Criminal Court acknowledges receipt of your documents/letter.

This communication has been duly entered in the Communications Register of the Office. We will give consideration to this communication, as appropriate, in accordance with the provisions of the Rome Statute of the International Criminal Court.

As soon as a decision is reached, we will inform you, in writing, and provide you with reasons for this decision.

Yours sincerely,

M.P. Dillon
Head of Information & Evidence Unit
Office of The Prosecutor

Dexter K. Kaiama
Law Office of Dexter K. Kaiama
111 Hekili Street, Suite A 1607
Kailua, Hawai'i 96734



Notre référence : OTP-CR-63/13

"

La Haye, le 4 mars 2013

Madame, Monsieur,

Le Bureau du Procureur de la Cour pénale internationale accuse réception de vos documents / de votre lettre.

Les informations y figurant ont été inscrites comme il se doit au registre des communications du Bureau et recevront toute l'attention voulue, conformément aux dispositions du Statut de Rome de la Cour pénale internationale.

Nous ne manquerons pas de vous communiquer par écrit la décision qui aura été prise à ce sujet, ainsi que les motivations qui la justifient.

Veillez agréer, Madame, Monsieur, l'assurance de notre considération distinguée.

M.P. Dillon
Chef de l'Unité des informations et des éléments de preuve
Bureau du Procureur

∴

Dexter K. Kaiama
Law Office of Dexter K. Kaiama
111 Hekili Street, Suite A 1607
Kailua, Hawai'i 96734

"

Attachment ‘J’

**LAW OFFICE OF
DEXTER K. KAIAMA**

111 Hekili Street, Suite A1607
Kailua, Hawai'i 96734

Tel. No. (808) 284-5675

April 10, 2013

FedEx Delivered

Lieutenant Patrick Kawai
Department of Public Safety
Sheriff Division, Hawai'i Section
1420 Kilauea Avenue #7
Hilo, HI 96720

***Re: Complaint for the Commission of Felonies under Title 18 U.S.C. §2441,
§1512(c)(2) and §372 respectively***

Dear Lieutenant Kawai:

This communication and complaint is provided to the Sheriff Division, Hawai'i Section, regarding the commission of war crimes/felonies by certain State of Hawai'i Judges on the Island of Hawai'i in violation of 18 U.S.C. §2441 of the *War Crimes Act* by depriving my clients of a fair and regular trial by a court that is not properly constituted pursuant to the 1907 Hague Convention, IV, and the 1949 Geneva Convention, IV. 18 U.S.C. §2441 provides:

(a) Whoever, whether inside or **outside the United States**, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the death penalty.

(b) The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

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(c) As used in this section the term “war crime” means any conduct (1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949.

Article 147 of the Fourth Geneva Convention defines one of the grave breaches as “willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention.” Willfully depriving my clients of the rights of a fair and regular trial is a war crime and felony punishable under the War Crimes Act, Title 18, U.S.C., §2441 that also applies “outside” of the United States of America. Pursuant to *United States v. Watson*, 423 U.S. 411 (1985), and *Draper v. United States*, 358 U.S. 307, 310 n. 3 (1959), the Department of the Attorney General’s Investigation Division, as law enforcement officers, are authorized to make war crime/felony arrests when the officer has probable cause without an arrest warrant that such person has committed the offense, whether in the officer’s presence or otherwise.

House of Representatives Report no. 104-698, at 5, from the House Committee on the Judiciary on the War Crimes Act (provided in the accompanying CD), states that, “military commissions could be used to provide a mechanism for the prosecution of war criminals.” Congress “has left to the President, and the military commanders representing him, to employ the commission, as occasion may require, for the investigation and punishment of violations of the laws of war and other offenses not cognizable by court-martial.” (Id.) According to Winthrop, “Military Law and Precedents” (1920), at 835, “In the absence of any statute prescribing by whom military commissions shall be constituted, they have been constituted in practice by the same commanders as are empowered by Arts. 72 and 73 to order general courts-martial.” Article 22—§822, Uniform Code of Military Justice, *Who may convene general courts-martial*, has superseded Articles 72 and 73. §822(a) provides, “General courts-martial may be convened by—(3) the commanding officer of a unified or specified combatant command,” *i.e. Commander, United States Pacific Command (PACOM)*, which was established as a unified command since January 1, 1947.

BACKGROUND

I represent clients who have been deprived of a fair and regular trial in civil proceedings in the District and Circuit Courts of the Third Circuit. These Courts are illegally constituted in the territory of the Hawaiian Kingdom whereby a properly constituted court would be a United States non-political military commission established by order of the Commander of the United States Pacific Command, being the extension of the United States President, who is responsible for the faithful execution of United States treaties.

Accordingly, the court(s) transcripts, rulings, minute orders and/or filed orders in these proceedings provide clear evidence of the Courts’ grave breaches of Article 147 of the

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Fourth Geneva Convention that has been criminalized under 18 U.S.C. §2441. Additionally, as a result of my appearance as counsel for hearings before Judges of the District and Circuit Courts of the Third Circuit, I witnessed the grave breaches/felonies described herein by said judges and legal counsel for the plaintiffs identified herein.

On August 10, 2012, David Keanu Sai, Ph.D., filed a Protest and Demand with the President of the United Nations General Assembly in New York (Exhibit “4” Declaration of David Keanu Sai, Ph.D., provided in the accompanying CD). The Protest and Demand was received and acknowledged by the President of the Sixty-Sixth Session of the General Assembly (Exhibit “1” Declaration of David Keanu Sai, Ph.D.). The Protest and Demand was accepted under Article 35(2) of the United Nations Charter, which provides:

A state which is not a Member of the United Nations may bring to the attention of the...General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter (emphasis added).

Having met the procedural and substantive requirements under Article 35(2) of the United Nations Charter, Dr. Mezoui presented it to the President of the General Assembly. If the Hawaiian Islands were an incorporated territory of the United States and indeed the State of Hawai‘i did lawfully exist, the office of the President of the United Nations General Assembly would not have received and acknowledged the Protest and Demand from the Hawaiian Kingdom without violating the sovereignty of the United States of America.

In July and August 2012, I submitted various Protests and Demands for war crimes upon the United States Pacific Command at Camp Smith pursuant to 18 U.S.C. §4—*misprision of felony*, which provides that a witness to the commission of a felony is obligated to report the felony to a “civil or military authority under the United States.” I also submitted the aforementioned Protests and Demands as formal complaints with the Office of the United Nations High Commissioner for Human Rights, Human Rights Council Branch—Complaint Procedure Unit, at Geneva, Switzerland, pursuant to the *International Covenant on Civil and Political Rights* (1966) that was ratified by the United States of America on June 8, 1992. Here follows the list of the Complainants, which are also provided in the accompanying CD.

- War Crime Complaint dated August 20, 2012
Victims: LANDISH K. & ROBIN R. ARMITAGE, husband and wife
Perpetrator: District Court Judge BARBARA T. TAKASE

- War Crime Complaint dated August 20, 2012
Victim: HARRIS BRIGHT
Perpetrator: Circuit Court Judge GREG NAKAMURA
- War Crime Complaint dated August 20, 2012
Victim: KALE KEPEKAIO GUMAPAC
Perpetrator: Circuit Court Judge GREG NAKAMURA
- War Crime Complaint dated August 20, 2012
Victims: SAMSON OKAPUA KAMAKEA, SR. & TALIA
POMAIKAI KAMAKEA, husband and wife
Perpetrator: Circuit Court Judge GREG K. NAKAMURA
- War Crime Complaint dated August 20, 2012
Victim: ELAINE E. KAWASAKI
Perpetrators: Circuit Court Judge GLENN S. HARA

On or about November 6, 2012, Officer Leland Pa of the Hawai'i County Police Department called the "Office of the United Nations High Commissioner for Human Rights, Human Rights Council Branch-Complaint Procedure Unit, United Nations Office at Geneva" and that a spokesperson confirmed they are in receipt of the complaints but could not provide any more assistance. Officer Pa stated the spokesperson recommended that he "contact U.S. departments that deal with war crime complaints." (Declaration of Leland Pa, para. 6, provided in the accompanying CD).

On November 8, 2012, at 9:30 a.m., Officer Pa called the headquarters of the U.S. Pacific Command at Camp Smith, Island of O'ahu, and spoke with Ronald Winfrey, Principal Deputy Staff Judge Advocate. Officer Pa informed Winfrey of his concerns and how these complaints could affect his duties as a police officer. When asked about the complaints made on behalf of my clients, Winfrey stated, "he knows those complaints because out of all the complaints he has read those are the most precise and clear." (Id., para. 9).

Pa stated that as he "began discussing the basis of the complaints such as no treaty of annexation, Mr. Winfrey candidly and without hesitation said, 'Oh yes, there is no treaty.'" (Id., para. 10) According to Officer Pa, Winfrey attempted to ease Officer Pa's concerns about the implications of war crimes by stating that U.S. Courts will not hear these cases because they would be dismissed for lack of jurisdiction. Officer Pa then asked Winfrey to respond to his questions.

- “Since there is no treaty, can the unresolved issues of the executive agreements and Hawaii’s occupation get resolved by a U.S. Court in the future?” Winfrey “stated that is possible.” (Id., para. 19 & 20).
- “If a U.S. Court should find in favor of plaintiff’s claim regarding the executive agreements and Hawai‘i’s occupation, then the prosecution of said War Crimes would come into play?” Winfrey “stated that is possible.” (Id., para. 21 & 22).
- “Since there is no treaty, the plaintiff does not need a U.S. court ruling? The Plaintiff could get these issues resolved in an International venue and then prosecution of war crimes would come into play?” Winfrey “stated that is possible.” (Id., para. 23-24).

Officer Pa informed Winfrey that as a police officer he swore “an oath to uphold the laws and constitution of the United States. Article 6, clause 2 of the U.S. constitution declares that treaties, which includes executive agreements, are the supreme law of the land. Because there is no treaty of annexation we are faced with a difficult situation, which needs clarification and I find it necessary to notify my superiors.” (Id., para. 25).

Pursuant to the inquiries set forth hereinabove, in January, 2013, Office Pa prepared and submitted his report/memorandum through his chain of command to Police Chief Harry S. Kubojiri concerning potential problems for law enforcement dealing with the commission of war crimes. Office Pa’s report included a request for Officer’s training in dealing with victims reporting the commission of war crimes. To date, no response or action has been taken on Officer Pa’s report and request for training.

On December 10, 2012, Dr. Sai also deposited an instrument of accession acceding to the jurisdiction of the International Criminal Court (ICC) with the Secretary-General, whereby the ICC will have jurisdiction over Hawaiian territory starting on March 4, 2013 (Exhibit “6” Declaration of David Keanu Sai, Ph.D.). The ICC prosecutes “individuals” and not States for war crimes, in particular, failure to provide a fair trial. See Article 8(2)(a)(vi) of the Rome Statute (1998). The Instrument of Accession was accepted under Article 125(3) of the Rome Statute, which provides:

This Statute shall be open by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

On January 14, 2013, Dr. Sai also deposited, by courier, an instrument of accession acceding to the 1949 Fourth Geneva Convention for the Protection of Civilian Persons in Time of War with Ambassador Benno Bättig, General Secretariat of the Swiss Federal Department of Foreign Affairs (FDFA), received at his office in Berne, Switzerland (Exhibit “9” Declaration of David Keanu Sai, Ph.D., provided in the accompanying CD). Article 156 of the Fourth Geneva Convention provides that accessions shall be notified in

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writing to the Swiss Federal Council and the Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified. The Swiss Federal Council receives accessions through the FDFA. According to Article 159, the Swiss Federal Council also informs the Secretary-General of the United Nations of all ratifications, accessions and denunciations received by them. The United States also ratified the Fourth Geneva Convention on February 8, 1955 (6.3 U.S.T. 3516).

Pursuant to Article 157, the Convention took immediate effect from the date of the deposit because Hawai‘i is currently under occupation. By acceding to the Fourth Geneva Convention, the Hawaiian Kingdom, as a State, became a High Contracting Party and its territory now comes under the Fourth Geneva Convention and Hawaiian nationals are presently considered “protected persons.”

The International Criminal Court prosecutes perpetrators who commit war crimes that violate the rights of “protected persons” as defined by the Fourth Geneva Convention. The Instrument of Accession was accepted under Article 155 of the Fourth Geneva Convention, which provides:

From the date of its coming into force, it shall be **open to any [State] Power** in whose name the present Convention has not been signed, to accede to this Convention.

Since February 14, 2013, I have filed seven complaints for war crimes committed by State of Hawai‘i Judges to include Judges from the Third Circuit with the Prosecutor of the International Criminal Court (ICC) at The Hague, Netherlands. I will be filing additional complaints with the (ICC) Prosecutor to include the remaining complaints that were filed with the Office of the United Nations High Commissioner for Human Rights, Human Rights Council Branch—Complaint Procedure Unit, at Geneva, Switzerland.

In addition to the ICC complaints, my clients also reported these war crimes to Officer Leland Pa of the Hawai‘i County Police Department. My clients stated to Officer Pa that for their statement of being a victim of a war crime/felony they are relying on the information and evidence provided in the complaints I drafted for the ICC. I have included copies of these ICC complaints in the accompanying CD.

Here follows the assigned criminal complaint numbers by the County of Hawai‘i Police Department for my clients.

1. Criminal Complaint no. C13004901
Victim: LORIANNE AMAVISCA

Perpetrators: District Court Judge HARRY P. FREITAS; Plaintiff FEDERAL NATIONAL MORTGAGE ASSOCIATION; Plaintiff's attorneys BLUE KAANEHE, ESQ., CHARLES PRATHER, ESQ., and PETER K. KEEGAN, ESQ.

2. Criminal Complaint no. C13004904
Victims: STEPHEN & ALAMA SCHWARTZ
Perpetrators: Circuit Court Judge RONALD IBARRA, Plaintiff BANK OF HAWAI'I, and Plaintiff's attorney MITZI A. LEE, ESQ.
3. Criminal Complaint no. C13004910
Victim: HARRIS BRIGHT
Perpetrators: Circuit Court Judge GREG K. NAKAMURA; Plaintiff DEUTSCHE BANK TRUST COMPANY AMERICAS; and Plaintiff's attorneys CHARLES R. PRATHER, ESQ., SOFIA M. HIROSANE, ESQ., and MICHAEL G.K. WONG, ESQ.
4. Criminal Complaint no. C13004911
Victims: HELEN & CRESENCIO SAPLA
Perpetrators: Circuit Court Judge GLENN S. HARA; Plaintiff THE BANK OF NEW YORK MELLON; and Plaintiff's attorneys ROBERT E. CHAPMAN, ESQ., and MARY MARTIN, ESQ.
5. Criminal Complaint no. C13004913
Victims: EDNA & ROMEO SALOM
Perpetrators: Circuit Court Judge GREG K. NAKAMURA; Plaintiff VANDERBILT MORTGAGE AND FINANCE, INC., a Tennessee corporation, U.S.A.; and Plaintiff's attorneys ROBERT D. TRIANTOS, ESQ., and EDMUND W.K. HAITSUKA, ESQ.
6. Criminal Complaint no. C13004915
Victim: KALE GUMAPAC
Perpetrators: Circuit Court Judge GREG K. NAKAMURA; Plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY; and Plaintiff's attorneys CHARLES R. PRATHER, ESQ., and SOFIA M. HIROSANE, ESQ.
7. Criminal Complaint no. C13004916
Victims: SALOTE & KULI TEAUPA
Perpetrators: District Court Judge JOSEPH FLORENDO; Plaintiff WELLS FARGO BANK, N.A.; and Plaintiff's attorneys BLUE

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KAANEHE, ESQ., PETER T. STONE, ESQ., CHARLES PRATHER, ESQ., and PETER K. KEEGAN, ESQ.

It has been brought to my attention that Officer Leland Pa has been placed on leave without pay while under internal investigation for carrying out his duties in compliance with 18 U.S.C. §2441. Officer Pa has been required to surrender his badge, police I.D. and issued firearm and has been restricted from entering any police premises or making contact with any police officer, official or staff associated with the Hawai'i County Police Department.

On or about February 21 through February 22, 2013 Officer Pa received the criminal complaints referred to hereinabove, interviewed the complainants, reviewed statements, received and submitted evidence and filed said criminal complaints. As part of his ongoing investigation, on or about February 28, 2013, Officer Pa contacted and/or attempted to contact alleged perpetrators of said criminal complaints.

Thereafter, on March 1, 2013 (the following day), Officer Pa was served with 37 charges (non-criminal) and immediately placed on leave without pay. Since the first complaint additional charges were also lodged against him. I am informed that Officer Pa has provided his response to these charges, contacted his union representative and is addressing his leave without pay through the administrative process available to him.

Having obtained the HCPD/OPS Complaint, a true and correct copy of which I have been authorized to enclose is provided in the accompanying CD, and upon further information provided to me by Officer Pa, I believe good cause exists which obliges me to report to your office and request your investigation into the possibility that a conspiracy, with the intention to intimidate and/or obstruct the fulfillment of Officer Pa's duty to complete his investigation into these complaints and then routing said complaints to the United States Pacific Command has occurred. The HCPD/OPS complaint against Officer Pa presents evidence of the crimes of obstruction of justice and conspiracy. Accordingly and pursuant to 18 U.S.C. §4, the complaint is provided as evidence herein in order to report the commission of primary and secondary felonies committed by the Judges of the Third Circuit while at the courthouse in Hilo and Kona.

1. Title 18 U.S.C. §1512(c)(2)—Obstruction of Justice

Charge 1 of the Complaint against Officer Pa under "specifications," states, "It is alleged that on February 28, 2013, while off duty, you telephoned State of Hawai'i Judges and Private Attorneys identifying yourself as a Police Officer with the Hawai'i County Police Department and informed them that they are the subjects of war crime complaints made against them and requested that they be interviewed as part of your investigation and

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provide a statement to you.” Charges 2-17 and 38-39, specifically identifies the names of the judges, judges’ clerks and the attorneys.

Upon information and belief, Officer Pa will confirm that the reason why he called while off duty was because his shift didn’t start until 3:30pm and that he wouldn’t have enough time to contact those named in the criminal complaints. More importantly, upon information and belief, Officer Pa will confirm that he was unable to document the calls he made to these judges and attorneys in an official report because he was relieved of his duties before he could prepare and submit his report. The calls and identities of the judges and judges’ clerks referred to in the HCPD/OPS complaint were noted in Officer Pa’s notes, and had not been revealed by Officer Pa, due to his untimely being placed on administrative leave without pay. Office Pa has personally retained continued and uninterrupted possession of said call notes.

Upon information and belief, Officer Pa will also confirm that, prior to being served with the HCPD/OPS complaint, he was told by his Captain, Robert Wagner, that judges and attorneys have been calling upstairs. Officer Pa will confirm his understanding of the term “upstairs” meant the upper chain of command of the Hawai’i County Police Department.

In light of this information, it can be reasonably concluded that the only way for the HCPD/OPS to have known that Officer Pa had in fact called the judges and judges’ clerks was to have been told by the judges and judges’ clerks themselves. Captain Wagner’s statement to Officer Pa (prior to Office Pa’s receiving the HCPD/OPS complaint) corroborates this conclusion. Instead of calling Officer Pa as the primary investigator, based upon the information enclosed or contained hereinabove, it appears these judges, being the alleged principals to the war crime/felony, called the upper chain of command of the Police Department to complain against Officer Pa.

Following completion of your investigation and confirmation of the enclosure(s) and information contained herein, it is respectfully demanded that your office notify me in writing whether it intends to take appropriate action against Police Chief Kubojiri, Captain Kawamoto, and Detective Prudencio as accessories after the fact.

18 U.S.C. §3. Accessory after the fact

Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment

or (notwithstanding section 3571) fined not more than one half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by life imprisonment or death, the accessory shall be imprisoned not more than 15 years.

On behalf of my clients, I submit this presents clear evidence of obstruction of justice by obstructing an official criminal investigation. At a minimum, it obliges me to report these occurrences to your office and demand your office take immediate and appropriate action.

Obstruction of justice. An attempt to interfere with the administration of the courts, the judicial system, or law enforcement officers, including threatening witnesses, improper conversations with jurors, hiding evidence, or interfering with an arrest. Such activity is a crime.

It is my understanding that once a criminal complaint number had been assigned for a Title 18 U.S.C. violation and the alleged perpetrators notified, the complaint becomes an active investigation and any attempt to obstruct or impede the investigation is a violation of 18 U.S.C. §1512(c)(2) and §372.

CHAPTER 73—OBSTRUCTION OF JUSTICE

18 U.S.C. §1512(c)(2). Whoever corruptly...obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years or both.

18 U.S.C. §372. Conspiracy to impede or injure officer

If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat...any officer of the United States to leave the place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined under this title or imprisoned not more than six years, or both.

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Furthermore, Officer Pa drew the criminal complaints for violations of 18 U.S.C. §2441, which is a federal crime, and the only agency capable of concluding the merits of the investigation is the U.S. Pacific Command Staff Judge Advocate, being a Federal agency, not the HCPD/OPS. Upon information and belief, Officer Pa will also confirm that his union, being SHOPO, has taken the position that the criminal complaints drawn were and continue to be active.

2. *Title 18 U.S.C. §372—Conspiracy*

Officer Pa's complaint is cloaked with the appearance of an internal investigation with the Hawai'i Police Department named as the complainant, when it should be an external matter with the judges and attorneys as the complainants. According to HPD/OPS-001 (PO/FORM GO 302-A) (04-25-12) Office of Professional Standards, complaints made against police officers require the complainants to notarize their complaints to ensure the truthfulness of the allegations. But to have the judges and attorneys submit notarized complaints against Officer Pa, when they are the alleged principals and accomplices in Officer Pa's criminal investigation, would clearly be *prima facie* evidence of obstruction of justice and violations of 18 U.S.C. §1512(c)(2) and §372. The complaint and actions taken against Officer Pa is a deliberate attempt to conceal the actions taken by the Judges and the Police Department. Conspiracy is an agreement by two or more people to commit a legal act using illegal means and is a violation of 18 U.S.C. §372.

COMPLAINT

This complaint, made on behalf of my clients, alleges the following named judges and attorneys for the commission of a war crime/felony pursuant to 18 U.S.C. §2441. These felonies occurred at the courthouses of Hilo and Kona.

Civil No. 11-1-0234

Felony Victims: SAMSON OKAPUA KAMAKEA, SR. & TALIA POMAIKAI KAMAKEA, husband and wife

Perpetrators: Circuit Court Judge GREG K. NAKAMURA, and attorneys JONATHAN W.Y. LAI, ESQ., and TRACEY L. KUBOTA, ESQ.

Civil No. 11-1-0106 (GSH)

Felony Victim: ELAINE KAWASAKI

Perpetrators: Circuit Court Judge GLENN S. HARA, and attorneys CHARLES R. PRATHER, ESQ., and SOFIA M. HIROSANE, ESQ.

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Civil No. 3RC11-1-1142

Felony Victims: LANDISH K. ARMITAGE & ROBIN R. ARMITAGE, husband and wife

Perpetrators: District Court Judge BARBARA T. TAKASE and attorney BLUE KAANEHE, ESQ.

Civil No. 3RC11-1-436

Felony Victim: LORIANNE AMAVISCA

Perpetrators: District Court Judge HARRY P. FREITAS, and attorneys BLUE KAANEHE, ESQ., CHARLES PRATHER, ESQ., and PETER K. KEEGAN, ESQ.

Civil No. 09-01-340K

Felony Victims: STEPHEN SCHWARTZ & ALAMA SCHWARTZ, husband and wife

Perpetrators: Circuit Court Judge RONALD IBARRA, and attorney MITZI A. LEE, ESQ.

Civil No. 11-1-0389

Felony Victim: HARRIS BRIGHT

Perpetrators: Circuit Court Judge GREG K. NAKAMURA, and attorneys CHARLES R. PRATHER, ESQ., SOFIA M. HIROSANE, ESQ., and MICHAEL G.K. WONG, ESQ.

Civil No. 12-1-0344

Felony Victims: HELEN SAPLA & CRESENCIO SAPLA, husband and wife

Perpetrators: Circuit Court Judge GLENN S. HARA, and attorneys ROBERT E. CHAPMAN, ESQ., and MARY MARTIN, ESQ.

Civil No. 12-1-0211

Felony Victims: EDNA SALOM & ROMEO SALOM, husband and wife

Perpetrators: Circuit Court Judge GREG K. NAKAMURA, and attorneys ROBERT D. TRIANTOS, ESQ., and EDMUND W.K. HAITSUKA, ESQ.

Civil No. 11-1-0590

Felony Victim: KALE GUMAPAC

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Perpetrators: Circuit Court Judge GREG K. NAKAMURA, and attorneys CHARLES R. PRATHER, ESQ., and SOFIA M. HIROSANE, ESQ.

Civil No. 3RC-11-1-00170K

Felony Victims: SALOTE TEAUPA & KULI TEAUPA, husband and wife

Perpetrators: District Court Judge JOSEPH FLORENDO, and attorneys BLUE KAANEHE, ESQ., PETER T. STONE, ESQ., CHARLES PRATHER, ESQ., and PETER K. KEEGAN, ESQ.

Additionally, this complaint, made on behalf of my clients, alleges the following named judges and court clerks for committing the felonies of obstruction of justice and conspiracy pursuant to 18 U.S.C. §1512(c)(2) and §372. These secondary felonies took place at the courthouses of Hilo and Kona.

Circuit Court Judge GREG NAKAMURA,
Circuit Court Judge RONALD IBARRA,
Circuit Court Judge GLENN HARA,
District Court Judge HARRY FREITAS,
Court Clerk SHAYLINA QUENGA, and
Court Clerk JAIME TAKIMOTO.

Specifically, as more fully disclosed in the HCPD/OPS complaint and information set forth hereinabove, these judges have used their professions to obstruct and impede an official criminal proceedings against themselves in violation of Rules 1.1, 1.2, and 1.3 of the Hawai'i Revised Code of Judicial Conduct (HRCJC).

Rule 1.1 (HRCJC). Compliance with the law

A judge shall comply with the law, including the Hawai'i Revised Code of Judicial Ethics.

Rule 1.2 (HRCJC). Promoting confidence in the judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

Department of Public Safety

Sheriff Division

April 10, 2013

Re: Complaint for the Commission of Felonies under Title 18 U.S.C. §2441, §1512(c)(2) & §372

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Rule 1.3 (HRCJC). Avoiding misuse of the prestige of judicial office

A judge shall not lend the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

Comment: [1a] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials.

ADDITIONAL INFORMATION

Upon information and belief, Officer Pa will confirm his telephone conversations with Ronald Winfrey, Principal Deputy Staff Judge Advocate, USPACOM, regarding the routing of the criminal investigations, which I believe will be important to your investigation and appropriate actions taken by your office.

CONCLUSION

These crimes, being felonies under United States Federal law—not State of Hawai‘i law, compels the Sheriff Division to initiate criminal complaints and immediately apprehend these perpetrators in order to put a stop to the flagrant violations that have and continue to transpire at the courthouses in Hilo and Kona, and to forward custody of the perpetrators and evidence to the State of Hawai‘i Attorney General Investigation Division who investigates felonies per a memorandum of understanding with the Department of Public Safety Sheriff Division. Upon completion of the preliminary investigation, the Investigation Division should route the reports to the Staff Judge Advocate of the U.S. Pacific Command, being the proper federal agency “outside” of U.S. territory, pursuant to 18 U.S.C. §2441, and §822(a)(3), Article 22, Uniform Code of Military Justice.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dexter K. Kaiama', with a long horizontal flourish extending to the right.

Dexter K. Kaiama, Esq.

Department of Public Safety

Sheriff Division

April 10, 2013

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enclosures (CD)

cc: International Criminal Court
Office of the Prosecutor
Communications
Post Office Box 19519
2500 CM The Hague
The Netherlands (Holland)

Office of the United Nations High Commissioner for Human Rights
Human Rights Council Branch-Complaint Procedure Unit
OHCHR- Palais Wilson
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland

Admiral Samuel J. Locklear III, USN
HQ USPACOM
Attn JOO
Box 64028
Camp H.M. Smith, HI 96861-4031

Attachment “K”

**LAW OFFICE OF
DEXTER K. KAIAMA**

111 Hekili Street, Suite A1607
Kailua, Hawai'i 96734

Tel. No. (808) 284-5675

April 14, 2013

E-mail Delivered

Detective Derek Morimoto
Criminal Investigations Section, Area 1
349 Kapiolani Street
Hilo, Hawai'i 96720
dmorimoto@co.hawaii.hi.us

***Re: Complaint for the Commission of Secondary Felonies
Under Title 18 U.S.C. §1512(c)(2) and §372***

Dear Detective Morimoto:

This communication and complaint is provided to the Criminal Investigations Section, Area 1, regarding the commission of secondary felonies by certain District and Circuit Court judges, clerks of these judges, and attorneys that have a direct nexus to your investigation of felonies committed against my clients pursuant to 18 U.S.C. §2441 of the *War Crimes Act* whereby my clients have been willfully deprived a fair and regular trial by a court that is not properly constituted pursuant to the 1949 Geneva Convention, IV. I have been made aware that you are the detective investigating the following criminal complaints made by my clients that were drawn by Officer Leland Pa.

1. Criminal Complaint no. C13004901
Victim: LORIANNE AMAVISCA
Perpetrators: District Court Judge HARRY P. FREITAS; Plaintiff FEDERAL NATIONAL MORTGAGE ASSOCIATION; Plaintiff's attorneys BLUE KAANEHE, ESQ., CHARLES PRATHER, ESQ., and PETER K. KEEGAN, ESQ.
2. Criminal Complaint no. C13004904
Victims: STEPHEN & ALAMA SCHWARTZ
Perpetrators: Circuit Court Judge RONALD IBARRA, Plaintiff BANK OF HAWAI'I, and Plaintiff's attorney MITZI A. LEE, ESQ.

3. Criminal Complaint no. C13004910
Victim: HARRIS BRIGHT
Perpetrators: Circuit Court Judge GREG K. NAKAMURA; Plaintiff DEUTSCHE BANK TRUST COMPANY AMERICAS; and Plaintiff's attorneys CHARLES R. PRATHER, ESQ., SOFIA M. HIROSANE, ESQ., and MICHAEL G.K. WONG, ESQ.
4. Criminal Complaint no. C13004911
Victims: HELEN & CRESENCIO SAPLA
Perpetrators: Circuit Court Judge GLENN S. HARA; Plaintiff THE BANK OF NEW YORK MELLON; and Plaintiff's attorneys ROBERT E. CHAPMAN, ESQ., and MARY MARTIN, ESQ.
5. Criminal Complaint no. C13004913
Victims: EDNA & ROMEO SALOM
Perpetrators: Circuit Court Judge GREG K. NAKAMURA; Plaintiff VANDERBILT MORTGAGE AND FINANCE, INC., a Tennessee corporation, U.S.A.; and Plaintiff's attorneys ROBERT D. TRIANTOS, ESQ., and EDMUND W.K. HAITSUKA, ESQ.
6. Criminal Complaint no. C13004915
Victim: KALE GUMAPAC
Perpetrators: Circuit Court Judge GREG K. NAKAMURA; Plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY; and Plaintiff's attorneys CHARLES R. PRATHER, ESQ., and SOFIA M. HIROSANE, ESQ.
7. Criminal Complaint no. C13004916
Victims: SALOTE & KULI TEAUPA
Perpetrators: District Court Judge JOSEPH FLORENDO; Plaintiff WELLS FARGO BANK, N.A.; and Plaintiff's attorneys BLUE KAANEHE, ESQ., PETER T. STONE, ESQ., CHARLES PRATHER, ESQ., and PETER K. KEEGAN, ESQ.

My clients reported to Officer Pa that, for their statement of being a victim of a felony under 18 U.S.C. §2441, they are relying on the information and evidence provided in the complaints I prepared for the International Criminal Court (ICC), The Hague, Netherlands, and if there are any questions by the police department regarding the investigation to contact myself as their attorney. I am aware that you have copies of the aforementioned ICC complaints because they were provided to Officer Pa when the felony complaints were initiated. 18 U.S.C. §2441 provides:

(a) Whoever, whether inside or **outside the United States**, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the death penalty.

(b) The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

(c) As used in this section the term “war crime” means any conduct (1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949.

Article 147 of the Fourth Geneva Convention defines one of the grave breaches as “willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention.” ***Willfully depriving my clients of the rights of a fair and regular trial is a war crime and felony punishable under the War Crimes Act, Title 18, U.S.C., §2441 that also applies “outside” of the United States of America.***

House of Representatives Report no. 104-698, at 5, from the House Committee on the Judiciary on the War Crimes Act, states that, “military commissions could be used to provide a mechanism for the prosecution of war criminals.” Congress “has left to the President, and the military commanders representing him, to employ the commission, as occasion may require, for the investigation and punishment of violations of the laws of war and other offenses not cognizable by court-martial.” (Id.) According to Winthrop, “Military Law and Precedents” (1920), at 835, “In the absence of any statute prescribing by whom military commissions shall be constituted, they have been constituted in practice by the same commanders as are empowered by Arts. 72 and 73 to order general courts-martial.” Article 22—§822, Uniform Code of Military Justice, *Who may convene general courts-martial*, has superseded Articles 72 and 73. §822(a) provides, “General courts-martial may be convened by—(3) the commanding officer of a unified or specified combatant command,” *i.e. Commander, United States Pacific Command (PACOM)*, which was established as a unified command since January 1, 1947.

The United States President is the sole representative of the United States in foreign relations, and military commanders represent him outside of the United States. Admiral Samuel J. Locklear III, Commander of the U.S. Pacific Command, is that military commander here in the Hawaiian Islands who is responsible under the 1996 War Crimes

Act, Title 18 U.S.C. §2441. Therefore, Preliminary investigations by the Hawai'i Police Department for violations of 18 U.S.C. §2441 should be routed to the U.S. Pacific Command for prosecution.

BACKGROUND

I represent clients who have been deprived of a fair and regular trial in civil proceedings in the District and Circuit Courts of the Third Circuit. These Courts are illegally constituted in the territory of the Hawaiian Kingdom whereby a properly constituted court would be a United States non-political military commission established by order of the Commander of the United States Pacific Command, being the extension of the United States President, who is responsible for the faithful execution of United States treaties.

Accordingly, the court(s) transcripts, rulings, minute orders and/or filed orders in these proceedings provide clear evidence of the Courts' grave breaches of Article 147 of the Fourth Geneva Convention that has been criminalized under 18 U.S.C. §2441.

Unable to procure a treaty of cession from the Hawaiian Kingdom government acquiring the Hawaiian Islands as required by international law, Congress enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War (30 U.S. Stat. 750) as a war measure. Congressional laws have no extraterritorial effect and are confined to United States territory.

The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War. The occupation reinforced and supplied the troops that have been occupying the Spanish colonies of Guam and the Philippines since May 1, 1898. Following the close of the Spanish-American War by the Treaty of Paris signed December 10, 1898 (30 U.S. Stat. 1754), U.S. troops remained in the Hawaiian Islands and continued its occupation to date in violation of international law.

Article 6, 1863 Lieber Code, regulated U.S. troops during the occupation of the Hawaiian Islands in 1898 and mandated the Commander of U.S. troops to administer the laws of the occupied country, being the civil and penal laws of the Hawaiian Kingdom. Article 6 was superseded by Article 43, 1899 Hague Convention, II (32 U.S. Stat. 1803), and then superseded by Article 43, 1907 Hague Convention, IV (36 U.S. Stat. 2227). Article 43 of the 1907 Hague Convention, IV, mandates the U.S. military to administer the civil and penal laws of the Hawaiian Kingdom. On August 12, 1949, the United States signed and ratified the (IV) *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* of 12 August 1949 (6 U.S.T. 3516, T.I.A.S No. 3365, 75 U.N.T.S. 287). In July 1956, the U.S. Department of the Army published Field Manual 27-10—The Law of Land Warfare. According to the United States Supreme Court:

“Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens; and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.... [T]he court recognized, and in each of the cases cited [involving the exercise of the sovereign power of the United States] found, the warrant for its conclusion is not in the provisions of the Constitution, but in the law of nations”. United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 318 (1936).

Illegally usurping Hawaiian sovereignty, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i* on April 30, 1900 (31 U.S. Stat. 141); and on March 18, 1959, President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai'i into the Union* (73 U.S. Stat. 4). These laws not only have no extraterritorial effect, but also stand in direct violation of the 1907 Hague Convention, IV, the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV, and 18 U.S.C. §2441.

The aforementioned Acts of the U.S. Congress constitute a usurpation of sovereignty during occupation by the United States and is the basis of the court's exercise of jurisdiction within the territory of the Hawaiian Islands. Without a treaty of cession, whereby the Hawaiian Kingdom transferred the Hawaiian Islands to the United States, these congressional acts, which includes the 1959 Statehood Act is a usurpation of Hawaiian sovereignty.

Since 1898, the United States methodically and pursuant to plan “Americanized” the Hawaiian Islands by denationalizing the occupants of the Hawaiian Kingdom. Through “Americanization” the national character of the Hawaiian Kingdom as an independent and sovereign State was eventually eradicated by assimilating Hawaiian nationals into the United States of America politically, culturally, socially, and economically. This plan included mass migration of American colonists, economic domination, installation of puppet governments, purported *de jure* annexation, and the installation of military bases throughout the Hawaiian Islands. As “Germanization in occupied territories” during the Second World War was a war crime, being Count III (J) of the Nuremburg Indictment, so is “Americanization.”

Courts illegally constituted in the territory of another sovereign and independent state is an extension of this war crime. See Alwyn V. Freeman, “War Crimes by Enemy Nationals Administering Justice in Occupied Territory,” 41 Am. J. Int'l L. 579-610, 606

(1947); and 15 Law Reports of Trials of War Criminals (United Nations War Crime Commission) 131 (1949). Therefore, by extension, the District and Circuit Courts of the Third Circuit cannot be considered lawfully constituted and my clients were willfully deprived of their right to get a fair and regular trial after presenting clear and convincing evidence that the Hawaiian Kingdom continues to exist as an occupied state.

On August 10, 2012, David Keanu Sai, Ph.D., filed a Protest and Demand with the President of the United Nations General Assembly in New York (Exhibit "4" Declaration of David Keanu Sai, Ph.D., provided in the accompanying CD). The Protest and Demand was received and acknowledged by the President of the Sixty-Sixth Session of the General Assembly (Exhibit "1" Declaration of David Keanu Sai, Ph.D.). The Protest and Demand was accepted under Article 35(2) of the United Nations Charter, which provides:

A state which is not a Member of the United Nations
may bring to the attention of the...General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter (emphasis added).

Having met the procedural and substantive requirements under Article 35(2) of the United Nations Charter, Dr. Mezoui presented it to the President of the General Assembly. If the Hawaiian Islands were an incorporated territory of the United States and indeed the State of Hawai'i did lawfully exist, the office of the President of the United Nations General Assembly would not have received and acknowledged the Protest and Demand from the Hawaiian Kingdom without violating the sovereignty of the United States of America.

In July and August 2012, I submitted various Protests and Demands for war crimes upon the United States Pacific Command at Camp Smith pursuant to 18 U.S.C. §4—*misprision of felony*, which provides that a witness to the commission of a felony is obligated to report the felony to a "civil or military authority under the United States." I also submitted the aforementioned Protests and Demands as formal complaints with the Office of the United Nations High Commissioner for Human Rights, Human Rights Council Branch—Complaint Procedure Unit, at Geneva, Switzerland, pursuant to the *International Covenant on Civil and Political Rights* (1966) that was ratified by the United States of America on June 8, 1992. Here follows the list of the complainants.

- War Crime Complaint dated August 20, 2012
Victims: LANDISH K. & ROBIN R. ARMITAGE, husband and wife
Perpetrator: District Court Judge BARBARA T. TAKASE

- War Crime Complaint dated August 20, 2012
Victim: HARRIS BRIGHT
Perpetrator: Circuit Court Judge GREG NAKAMURA
- War Crime Complaint dated August 20, 2012
Victim: KALE KEPEKAIO GUMAPAC
Perpetrator: Circuit Court Judge GREG NAKAMURA
- War Crime Complaint dated August 20, 2012
Victims: SAMSON OKAPUA KAMAKEA, SR. & TALIA
POMAIKAI KAMAKEA, husband and wife
Perpetrator: Circuit Court Judge GREG K. NAKAMURA
- War Crime Complaint dated August 20, 2012
Victim: ELAINE E. KAWASAKI
Perpetrators: Circuit Court Judge GLENN S. HARA

On or about November 6, 2012, Officer Pa called the “Office of the United Nations High Commissioner for Human Rights, Human Rights Council Branch-Complaint Procedure Unit, United Nations Office at Geneva” and that a spokesperson confirmed they are in receipt of the complaints but could not provide any more assistance. Officer Pa stated the spokesperson recommended that he “contact U.S. departments that deal with war crime complaints.” (Declaration of Leland Pa, para. 6, provided in the accompanying CD).

On November 8, 2012, at 9:30 a.m., Officer Pa called the headquarters of the U.S. Pacific Command at Camp Smith, Island of O‘ahu, and spoke with Ronald Winfrey, Principal Deputy Staff Judge Advocate. Officer Pa informed Winfrey of his concerns and how these complaints could affect his duties as a police officer. When asked about the complaints made on behalf of my clients, Winfrey stated, “he knows those complaints because out of all the complaints he has read those are the most precise and clear.” (Id., para. 9).

Pa stated that as he “began discussing the basis of the complaints such as no treaty of annexation, Mr. Winfrey candidly and without hesitation said, ‘Oh yes, there is no treaty.’” (Id., para. 10) According to Officer Pa, Winfrey attempted to ease Officer Pa’s concerns about the implications of war crimes by stating that U.S. Courts will not hear these cases because they would be dismissed for lack of jurisdiction. Officer Pa then asked Winfrey to respond to his questions.

- “Since there is no treaty, can the unresolved issues of the executive agreements and Hawaii’s occupation get resolved by a U.S. Court in the future?” Winfrey “stated that is possible.” (Id., para. 19 & 20).

- “If a U.S. Court should find in favor of plaintiff’s claim regarding the executive agreements and Hawai‘i’s occupation, then the prosecution of said War Crimes would come into play?” Winfrey “stated that is possible.” (Id., para. 21 & 22).
- “Since there is no treaty, the plaintiff does not need a U.S. court ruling? The Plaintiff could get these issues resolved in an International venue and then prosecution of war crimes would come into play?” Winfrey “stated that is possible.” (Id., para. 23-24).

Officer Pa informed Winfrey that as a police officer he swore “an oath to uphold the laws and constitution of the United States. Article 6, clause 2 of the U.S. constitution declares that treaties, which includes executive agreements, are the supreme law of the land. Because there is no treaty of annexation we are faced with a difficult situation, which needs clarification and I find it necessary to notify my superiors.” (Id., para. 25).

Pursuant to the inquiries set forth hereinabove, in January, 2013, Office Pa prepared and submitted his report/memorandum through his chain of command to Police Chief Harry S. Kubojiri concerning potential problems for law enforcement dealing with the commission of war crimes. Officer Pa’s report included a request for Officer’s training in dealing with victims reporting the commission of war crimes. To date, no response or action has been taken on Officer Pa’s report and request for training.

On December 10, 2012, Dr. Sai also deposited an instrument of accession acceding to the jurisdiction of the International Criminal Court (ICC) with the Secretary-General, whereby the ICC will have jurisdiction over Hawaiian territory starting on March 4, 2013 (Exhibit “6” Declaration of David Keanu Sai, Ph.D.). The ICC prosecutes “individuals” and not States for war crimes, in particular, failure to provide a fair trial. See Article 8(2)(a)(vi) of the Rome Statute (1998). The Instrument of Accession was accepted under Article 125(3) of the Rome Statute, which provides:

This Statute shall be open by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

On January 14, 2013, Dr. Sai also deposited, by courier, an instrument of accession acceding to the 1949 Fourth Geneva Convention for the Protection of Civilian Persons in Time of War with Ambassador Benno Böttig, General Secretariat of the Swiss Federal Department of Foreign Affairs (FDFA), received at his office in Berne, Switzerland (Exhibit “9” Declaration of David Keanu Sai, Ph.D., provided in the accompanying CD). Article 156 of the Fourth Geneva Convention provides that accessions shall be notified in writing to the Swiss Federal Council and the Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified. The Swiss Federal Council receives accessions through the

Hawai'i County Police Department
Criminal Investigations Section, Area 1
April 14, 2013

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FDFA. According to Article 159, the Swiss Federal Council also informs the Secretary-General of the United Nations of all ratifications, accessions and denunciations received by them. The United States also ratified the Fourth Geneva Convention on February 8, 1955 (6.3 U.S.T. 3516).

Pursuant to Article 157, the Convention took immediate effect from the date of the deposit because Hawai'i is currently under occupation. By acceding to the Fourth Geneva Convention, the Hawaiian Kingdom, as a State, became a High Contracting Party and its territory now comes under the Fourth Geneva Convention and Hawaiian nationals are presently considered "protected persons."

The International Criminal Court prosecutes perpetrators who commit war crimes that violate the rights of "protected persons" as defined by the Fourth Geneva Convention. The Instrument of Accession was accepted under Article 155 of the Fourth Geneva Convention, which provides:

From the date of its coming into force, it shall be **open to any [State] Power** in whose name the present Convention has not been signed, to accede to this Convention.

COMPLAINT

It has been brought to my attention that Officer Pa has been placed on leave without pay while under internal investigation for carrying out his duties in compliance with 18 U.S.C. §2441.

Having obtained the HCPD/OPS Complaint (a true and correct copy of which I have been authorized to enclose for your records), and upon further information provided to me by Officer Pa when I spoke with him over the phone regarding the status of the investigation of my clients' complaints, I believe good cause exists which obliges me to report to your office and request your investigation into the possibility that a conspiracy, with the intention to intimidate and/or obstruct the fulfillment of Officer Pa's duty to complete his investigation into the criminal complaints that were reported by my clients and followed by his (Officer Pa's) routing of said complaints to the United States Pacific Command, has occurred. The HCPD/OPS complaint against Officer Pa presents evidence of the crimes of obstruction of justice and conspiracy and identifies the alleged perpetrators.

Accordingly, pursuant to 18 U.S.C. §4 and the enclosed HCPD/OPS complaint, I am reporting the commission of secondary felonies committed by judges of the third circuit, court clerks of the third circuit and attorneys.

1. CHARGE 1—Obstruction of Justice (18 U.S.C. §1512(c)(2))

Charge 1 of the Complaint against Officer Pa under “specifications,” states, “It is alleged that on February 28, 2013, while off duty, you telephoned State of Hawai'i Judges and Private Attorneys identifying yourself as a Police Officer with the Hawai'i County Police Department and informed them that they are the subjects of war crime complaints made against them and requested that they be interviewed as part of your investigation and provide a statement to you.” *Charges 2-17 and 38-39, specifically identifies the names of the judges, judges' clerks and the attorneys.*

Upon information and belief, Officer Pa will confirm that the reason why he called while off duty was because his shift didn't start until 3:30pm and that he wouldn't have enough time to contact those named in the criminal complaints. More importantly, upon information and belief, Officer Pa will confirm that he was unable to document the calls he made to these judges and attorneys in an official report because he was relieved of his duties before he could prepare and submit his report.

The calls and identities of the judges and judges' clerks referred to in the HCPD/OPS complaint were noted in Officer Pa's notes, and had not been revealed by Officer Pa, due to his untimely being placed on administrative leave without pay. Officer Pa has personally retained continued and uninterrupted possession of said call notes.

Upon information and belief, Officer Pa will also confirm that, prior to being served with the HCPD/OPS complaint, he was told by his Captain, Robert Wagner, that judges and attorneys have been calling upstairs. Officer Pa will confirm his understanding of the term “upstairs” meant the upper chain of command of the Hawai'i County Police Department.

In light of this information, it can be reasonably concluded that the only way for the HCPD/OPS to have known that Officer Pa had in fact called the judges, judges' clerks and attorneys was to have been told by the judges, judges' clerks and attorneys themselves. Captain Wagner's statement to Officer Pa (prior to Office Pa's receiving the HCPD/OPS complaint) corroborates this conclusion. Instead of calling Officer Pa as the initial investigator, based upon the information enclosed or contained hereinabove, it appears these judges and attorneys, being the alleged principals to the felony complaint, called the upper chain of command of the Police Department to complain against Officer Pa.

On behalf of my clients, I submit this presents clear evidence of obstruction of justice by obstructing an official criminal investigation. At a minimum, it obliges me to report these occurrences to your office and demand your office take immediate and appropriate action.

Obstruction of justice. An attempt to interfere with the administration of the courts, the judicial system, or law enforcement officers, including threatening witnesses, improper conversations with jurors, hiding evidence, or interfering with an arrest. Such activity is a crime.

From the mere fact that you have been assigned to investigate the criminal complaints initiated by Officer Pa clearly indicates that this is an official investigation, and any attempt to obstruct or impede an official investigation is a violation of 18 U.S.C. §1512(c)(2).

CHAPTER 73—OBSTRUCTION OF JUSTICE

18 U.S.C. §1512(c)(2). Whoever corruptly...obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years or both.

2. CHARGE 2—Conspiracy to impede or injure officer (18 U.S.C. §372)

The complaint against Officer Pa is cloaked with the appearance of an internal investigation with the Hawai'i Police Department named as the complainant, when it should be an external matter with the judges and attorneys as the complainants. According to HPD/OPS-001 (PO/FORM GO 302-A) (04-25-12) Office of Professional Standards, complaints made against police officers require the complainants to notarize their complaints to ensure the truthfulness of the allegations. But to have the judges and attorneys submit notarized complaints against Officer Pa, when they are the alleged principals and accomplices in Officer Pa's criminal investigation, would clearly be *prima facie* evidence of obstruction of justice and violations of 18 U.S.C. §1512(c)(2) and §372. The complaint and actions taken against Officer Pa is a deliberate attempt to conceal the actions of the judges and attorneys. Conspiracy is an agreement by two or more people to commit an illegal act using illegal means and is a violation of 18 U.S.C. §372.

18 U.S.C. §372. Conspiracy to impede or injure officer

If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat...any officer of the United States to leave the place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his

property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined under this title or imprisoned not more than six years, or both.

This complaint, made on behalf of my clients, alleges the following named judges, judge's court clerks and attorneys, identified in the enclosed HCPD/OPS complaint, appear to have engaged or otherwise participated in the commission of secondary felonies of obstruction of justice and conspiracy pursuant to 18 U.S.C. §1512(c)(2) and §372. These secondary felonies have a direct nexus with the original felonies that your office is currently investigating. The following judges, judge's court clerks and/or attorneys, identified in the HCPD/OPS complaint, are the alleged perpetrators of the secondary felonies:

1. *Principal*—Judge Greg Nakamura;
2. *Principal*—Judge Ronald Ibarra;
3. *Principal*—Judge Glenn Hara;
4. *Principal*—Judge Harry Freitas;
5. *Principal/Accomplice*—Court Clerk Shaylina Quenga;
6. *Principal/Accomplice*—Court Clerk Jaime Takimoto;
7. *Principal/Accomplice*—Robert Kim, Esq.;
8. *Principal/Accomplice*—Edmund Haitzuka, Esq.;
9. *Principal/Accomplice*—Robert Triantos, Esq.;
10. *Principal/Accomplice*—Peter Kubota, Esq.;
11. *Principal/Accomplice*—Mitzi Lee, Esq.

**3. CHARGE 3—Misuse of the prestige of judicial office
(Rule 1.3, Haw. Revised Rules of Judicial Conduct)**

Specifically, as more fully disclosed in the HCPD/OPS complaint and information set forth hereinabove, these judges have used their professions to obstruct and impede an official criminal proceedings against themselves in violation of Rule 1.3 of the Hawai'i Revised Code of Judicial Conduct (HRCJC).

Rule 1.3 (HRCJC). Avoiding misuse of the prestige of judicial office

A judge shall not lend the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

Comment: [1a] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or

deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials.

As a result of my appearance as counsel for my clients in hearings before the aforementioned judges of the District and Circuit Courts of the Third Circuit, I personally witnessed the commission of felonies described herein by said judges and attorneys for the plaintiffs identified herein.

Accordingly, in light of the evidence presented by this submission, that the aforementioned judges and attorneys have committed secondary felonies, I respectfully demand that you immediately apprehend these perpetrators and place them under arrest in order to put a stop to the flagrant violations that have and continue to transpire against the rights of my clients. Additionally, your apprehension and arrest of these perpetrators are vital to ensure the integrity of the criminal investigative process and a public trust that reporting of such crimes will be protected against the unlawful influence, interference and/or obstruction by perpetrators of felonies under 18 U.S.C. §2441.

Additionally, the Criminal Investigations Section, Area 1, should immediately conduct an investigation into these occurrences initiated by the Police Captain and the detective identified in the HCPD-OPS complaint against Office Pa as accessories after the fact.

1. *Accessory after the fact*—Police Captain Samuel Kawamoto; and
2. *Accessory after the fact*—Police Detective Brian D. Prudencio.

Upon information and belief my clients will confirm that, when he contacted them, Detective Prudencio gave my clients the impression that he was investigating their complaints when in fact he was investigation Officer Pa. This is unacceptable to mislead victims of a felony who were relying on the Hawai'i Police Department to do an impartial, independent and fair investigation of the alleged crime committed against them. When Detective Prudencio contacted me, he only admitted to investigating Officer Pa after I asked if he was calling me about my clients' complaints.

CONCLUSION

My clients have told me that you have indicated to them that you intend to route the investigation of their complaints to the Federal Bureau of Investigation. I respectfully submit this is in error, **because the appropriate Federal agency outside of the United States pursuant to 18 U.S.C. §2441 is the United States Pacific Command, Staff Judge Advocate, as explained hereinabove.**

Hawai'i County Police Department
Criminal Investigations Section, Area 1
April 14, 2013

Re: Complaint for the Commission of Secondary Felonies under Title 18 U.S.C. §1512(c)(2) & §372
Page 14

Upon information and belief, Officer Pa will confirm his telephone conversations with Ronald Winfrey, Principal Deputy Staff Judge Advocate, USPACOM, regarding the routing of the criminal investigations, which I believe will be important to your investigation and appropriate actions taken by your office.

Therefore, upon completion of your preliminary investigation, the Criminal Investigation Section, Area 1, please properly route the reports to the Staff Judge Advocate of the U.S. Pacific Command, being the proper federal agency "outside" of U.S. territory, pursuant to 18 U.S.C. §2441, and §822(a)(3), Article 22, Uniform Code of Military Justice.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dexter K. Kaiama', with a large, stylized initial 'D'.

Dexter K. Kaiama, Esq.

enclosures

cc: International Criminal Court
Office of the Prosecutor
Communications
Post Office Box 19519
2500 CM The Hague
The Netherlands (Holland)

Office of the United Nations High Commissioner for Human Rights
Human Rights Council Branch-Complaint Procedure Unit
OHCHR- Palais Wilson
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland

Admiral Samuel J. Locklear III, USN
HQ USPACOM
Attn JOO
Box 64028
Camp H.M. Smith, HI 96861-4031

Hawai'i County Police Department
Criminal Investigations Section, Area 1
April 14, 2013

Re: Complaint for the Commission of Secondary Felonies under Title 18 U.S.C. §1512(c)(2) & §372
Page 15

VERIFICATION

Pursuant to Title 18 U.S.C. §1001, I, Dexter K. Kaiama, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation of the foregoing complaint.

Dated: April 14, 2013

A handwritten signature in black ink, appearing to read "Dexter K. Kaiama", with a long horizontal flourish extending to the right.

Dexter K. Kaiama

DECLARATION OF DAVID KEANU SAI, PH.D.

David Keanu Sai, Ph.D., declares 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. The Hawaiian Kingdom, as an independent and sovereign state, has forty-six (46) treaty partners, to wit: Argentina, Austria, Belgium, Bolivia, Brazil, Bulgaria, Chile, Colombia, Costa Rica, Denmark, Dominican Republic Egypt, Ecuador, El Salvador, France, Germany, Greece, Guatemala, Haiti, Honduras, Hungary, Iran, Italy, Japan, Liberia, Luxembourg, Mexico, Montenegro, Netherlands, Nicaragua, Norway, Paraguay, Peru, Portugal, Romania, Russia, Serbia, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, and Venezuela.
3. The aforementioned treaties have not been terminated by consent of the parties and still remain in full force and effect.
4. States who gained their independence from State parties to treaties with the Hawaiian Kingdom, whether as colonial possessions, mandate territories or trust territories, are also successor State parties to the treaties with the Hawaiian Kingdom, which now includes one-hundred and twenty-seven (127) States.

5. On August 1, 2012, the *acting* government of the Hawaiian Kingdom commissioned me as Ambassador-at-large to bring to the attention of the international community the illegal and prolonged occupation of the Hawaiian Kingdom and to prepare a Protest and Demand to be filed with the President of the United Nations General Assembly under Article 35(2) of the Charter of the United Nations.
6. Article 35(2) of the United Nations Charter provides, “a State which is not a Member of the United Nations may bring to the attention of the...General Assembly any dispute to which it is a party...” The Hawaiian Kingdom is a non-Member State of the United Nations.
7. On August 10, 2012, I was granted permission to enter the United Nations facility and Mrs. Hanifa Mezoui, Ph.D., Special Coordinator, Third Committee and Civil Society, Office of the President of the Sixty-Sixth Session of the General Assembly received me in the headquarters for the President of the United Nations General Assembly.
8. After I presented my credentials and explained the circumstances of the Hawaiian situation and that I was there to file a Protest and Demand against one-hundred and seventy-three (173) member States of the United Nations for treaty violations as a non-member State under Article 35(2) of the United Nations Charter, Dr. Mezoui acknowledged receipt of the Protest and Demand and a CD of PDF files of Annexes.
9. Attached hereto as Exhibit “1” is a true and correct copy of Dr. Mezoui’s acknowledgment of receipt.

10. One-hundred and twenty (120) named States in the Protest and Demand are also members of the Group of 77 at the United Nations. Mr. Pierre Forien, on behalf of the Executive Secretary of the Group of 77, also acknowledged receipt of the Protest and Demand and a CD of PDF files of Annexes on August 10, 2012 at the United Nations.
11. Attached hereto as Exhibit “2” is a true and correct copy of Mr. Forien’s acknowledgment of receipt.
12. The Protest and Demand and a CD of PDF files of Annexes was also acknowledged and received by Mr. Carlyle Corbin, Ph.D., Executive Secretary of the Council of Presidents, which is a think tank comprised of former Presidents of the United Nations General Assembly that advises the sitting President, on August 10, 2012.
13. Attached hereto as Exhibit “3” is a true and correct copy of Dr. Corbin’s acknowledgment of receipt.
14. All one-hundred and seventy-three (173) named States in the Protest and Demand received a copy of the same by their Permanent Missions to the United Nations in New York.
15. Attached hereto as Exhibit “4” is a true and correct copy of the Protest and Demand (without annexes) and the cover letter to the President of the United Nations General Assembly. The PDFs of the Annexes can be accessed online at http://hawaiiankingdom.org/UN_Protest_Annexes.shtml.
16. Attached hereto as Exhibit “5” is a true and correct copy of a second letter received by the President of the United Nations General Assembly dated

August 14, 2012.

17. On August 19, 2012, I received a telephone call from Dr. Mourad Ahmia, Executive Secretary of the Group of 77 at the United Nations, in New York City, notifying me that after further review by the President's office the Protest and Demand met the procedural requirements under the Charter of the United Nations and that the Hawaiian Kingdom, being a State not a member of the United Nations, the Hawaiian Protest and Demand was forwarded to the President of the United Nations General Assembly, H.E. Mr. Nassir Abdulaziz Al-Nasser of Qatar, under Article 35(2) of the Charter of the United Nations.
18. Dr. Ahmia also told me that H.E. Nassir Abdulaziz Al-Nasser would be passing on the Protest and Demand and all relevant documents to his successor H.E. Vuk Jeremić of the Republic of Serbia, who took office on September 18, 2012.
19. On November 28, 2012, the acting Government of the Hawaiian Kingdom acceded to the Rome Statute establishing the International Criminal Court, The Hague, Netherlands.
20. Attached hereto as Exhibit "6" is a true and correct copy of the Instrument of Accession dated November 28, 2012.
21. On December 10, 2012, I deposited the Instrument of Accession with the Secretary-General of the United Nations, by the United Nations Treaty Section, Office of Legal Affairs, in New York City. The International Criminal Court prosecutes individuals and not States for war crimes.
22. Attached hereto as Exhibit "7" is a true and correct copy of the cover letter to

the Secretary-General of the United Nations dated December 10, 2012.

23. Attached hereto as Exhibit “8” is a true and correct copy of the United Nations Treaty Section, Office of Legal Affairs, acknowledgment and receipt of the Instrument of Accession.

24. On January 14, 2013, I deposited, by courier, an instrument of accession acceding to the 1949 Fourth Geneva Convention for the Protection of Civilian Persons in Time of War with Ambassador Benno Bättig, General Secretariat of the Swiss Federal Department of Foreign Affairs (FDFA), received at his office in Berne, Switzerland. The Fourth Geneva Convention took immediate effect on January 14, 2013 pursuant to Article 157 of the Fourth Geneva Convention.

25. Attached hereto as Exhibit “9” is a true and correct copy of the Swiss Government’s acknowledgement and receipt dated January 14, 2013 and the Instrument of Accession dated November 28, 2012.

26. 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 FOREGOING IS TRUE AND CORRECT.

DATED: Honolulu, Hawai’i, January 16, 2013.



David Keanu Sai

Exhibit “1”



DR. DAVID KEANU SAI, PH.D.

Ambassador-at-large for the Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194
Tel: (808) 383-6100
E-mail: interior@hawaiiankingdom.org
Website: <http://hawaiiankingdom.org/>

ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge the receipt of the following documents from the Ambassador-at-large for the Hawaiian Kingdom deposited with the President of the United Nations General Assembly pursuant to Article 35(2) of the United Nations Charter:

1. Protest and Demand dated 9 August 2012; and
2. CD of PDF files of Annexes to the Protest and Demand.

Hanifa Mezoui
(Signature)

10 August 2012
(Date)



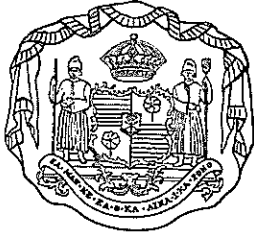
Hanifa Mezoui, PhD

Special Coordinator
Third Committee and Civil Society
Office of the President of the Sixty-Sixth
Session of the General Assembly

United Nations
Room: NL-2082 T
New York, NY 10017

T (+1-212) 963-3573
C (+1-917) 238-2714
F (+1-212) 963-3301
E mezouih@un.org

Exhibit “2”



DR. DAVID KEANU SAI, PH.D.


Ambassador-at-large for the Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194
Tel: (808) 383-6100
E-mail: interior@hawaiiankingdom.org
Website: <http://hawaiiankingdom.org/>

ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge the receipt of the following documents from the Ambassador-at-large for the Hawaiian Kingdom deposited with the Executive Secretary of the Group of 77 at the United Nations:

1. Protest and Demand dated 9 August 2012 deposited with the President of the United Nations General Assembly pursuant to Article 35(2) of the United Nations Charter; and
2. CD of PDF files of Annexes to the Protest and Demand.

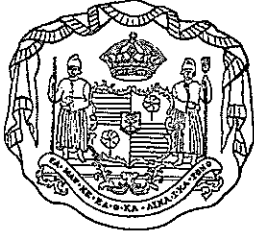
PIERRE FORIEN


(Signature)

08/10/2012

(Date)

Exhibit “3”



DR. DAVID KEANU SAI, PH.D.

Ambassador-at-large for the Hawaiian Kingdom

P.O. Box 2194

Honolulu, HI 96805-2194

Tel: (808) 383-6100

E-mail: interior@hawaiiankingdom.org

Website: <http://hawaiiankingdom.org/>

ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge the receipt of the following documents from the Ambassador-at-large for the Hawaiian Kingdom deposited with the Executive Secretary of the Council of Presidents of the United Nations:

1. Protest and Demand dated 9 August 2012 deposited with the President of the United Nations General Assembly pursuant to Article 35(2) of the United Nations Charter; and
2. CD of PDF files of Annexes to the Protest and Demand.

A handwritten signature in cursive script, appearing to read 'C. C. Chiu', written above a horizontal line.

(Signature)

A handwritten date '10/08/12' written above a horizontal line.

(Date)

Exhibit “4”



DAVID KEANU SAI, PH.D.

Ambassador-at-large for the Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194
Tel: (808) 383-6100
E-mail: interior@hawaiiankingdom.org
Website: <http://hawaiiankingdom.org/>

August 9, 2012

Excellency:

In accordance with Article 35(2) of the United Nations Charter, I have the honor on behalf of the *acting* government, to bring to the attention of the United Nations General Assembly, by its President, a Protest and Demand of the prolonged occupation of the Hawaiian Kingdom, being a non-Member State of the United Nations, attached herein together with a CD of PDF files of Annexes to the Protest and Demand and other pertinent documents. The Hawaiian Kingdom achieved the recognition of its independence as a sovereign State on November 28, 1843 by joint proclamation from Great Britain and France and by 1893, the Hawaiian Kingdom maintained over ninety legations and consulates throughout the world and has been a Member State of the Universal Postal Union since January 1, 1882.

Unable to procure a treaty of cession from the Hawaiian Kingdom acquiring the Hawaiian Islands as required by international law, the United States Congress enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War as a war measure. The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War, and the occupation was justified by the United States as a military necessity in order to reinforce and supply the troops that have been occupying the Spanish colonies of Guam and the Philippines since May 1, 1898. Following the close of the Spanish-American War by the 1898 Treaty of Paris, U.S. troops remained in the Hawaiian Islands and continued its illegal occupation to date in violation of the 1893 *Lili'uokalani assignment and Agreement restoration*, being international compacts established through *exchange of notes*, the 1907 Hague Convention, IV, and the 1949 Geneva Convention, IV.

Furthering the illegal occupation, United States President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i* on April 30, 1900; and on March 18, 1959, United States President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai'i into the Union*. These laws, which include the 1898 joint resolution of annexation, have no extraterritorial effect and stand in direct violation of international law and the 1893 *Lili'uokalani assignment and Agreement restoration*. Actions taken against the Hawaiian

Kingdom by the United States constitutes serious international wrongful acts pursuant to the *Responsibility of States for International Wrongful Acts* (2001).

I had the honor of serving as Agent for the *acting* Government of the Hawaiian Kingdom in arbitral proceedings before the Permanent Court of Arbitration, *Larsen v. Hawaiian Kingdom*, 119 *International Law Reports* 566 (2001).¹ The Arbitral Tribunal in the *Larsen* arbitration comprised of Professor James Crawford, SC, Presiding Arbitrator, who at the same time was a member of the United Nations International Law Commission and *Special Rapporteur* on State Responsibility (1997-2001); Professor Christopher Greenwood, QC, Associate Arbitrator, who now serves as a Judge on the International Court of Justice since February 6, 2009; and Gavan Griffith, QC, Associate Arbitrator, who served as former Solicitor General for Australia. The jurisdictional basis of the Permanent Court of Arbitration in *Larsen v. Hawaiian Kingdom* was a dispute between a State and a private person. I also served as Agent for the *acting* Government when I filed a Complaint against the United States of America with the United Nations Security Council on July 5, 2001, under the Presidency of China.²

The Hawaiian Kingdom will withdraw States from this Protest and Demand, with the exception of the United States of America, when said States shall declare, whether individually or collectively, that they will not recognize as lawful the United States of America's presence and authority within the territory, territorial seas, exclusive economic zone and airspace of the Hawaiian Kingdom according to Article 41(2), *Responsibility of States for International Wrongful Acts* (2001), excepting the United States' temporary and limited authority vested by virtue of the 1893 *Lili'uokalani assignment*, Article 43 of the 1907 Hague Convention, IV, and international law.

The Hawaiian Kingdom will be providing individual packets for the Permanent Representatives of the named States that contain a cover letter with accompanying CD of PDF files of the Protest and Demand and Annexes.

Please accept, Excellency, the assurances of my highest consideration,

A handwritten signature in black ink, appearing to read "David Keanu Sai". The signature is fluid and cursive, with a small dot at the end.

David Keanu Sai

¹ Bederman & Hilbert, "Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawai'i," 95 *American Journal of International Law* 927-933 (2001).

² 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); and David Keanu 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).

PROTEST and DEMAND

BY

THE HAWAIIAN KINGDOM

FOR SERIOUS BREACHES OF
OBLIGATIONS UNDER PEREMPTORY
NORMS OF GENERAL INTERNATIONAL
LAW COMMITTED BY:

THE UNITED STATES OF AMERICA,

AND INTERNATIONALLY WRONGFUL
ACTS COMMITTED BY:

AFGHANISTAN, ALGERIA, ANGOLA, ANTIGUA AND BARBUDA, ARGENTINA, ARMENIA, AUSTRALIA, AUSTRIA, AZERBAIJAN, BAHAMAS, BAHRAIN, BANGLADESH, BARBADOS, BELARUS, BELGIUM, BELIZE, BENIN, BHUTAN, BOLIVIA (PLURINATIONAL STATE OF), BOTSWANA, BRAZIL, BRUNEI DARUSSALAM, BULGARIA, BURKINA FASO, BURUNDI, CAPE VERDE, CENTRAL AFRICAN REPUBLIC, CHAD, CHILE, COLOMBIA, COMOROS, CONGO, COSTA RICA, COTE D'IVOIRE, CUBA, CYPRUS, CZECH REPUBLIC, DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, DEMOCRATIC REPUBLIC OF THE CONGO, DENMARK, DJIBOUTI, DOMINICA, DOMINICAN REPUBLIC, ECUADOR, EGYPT, EL

SALVADOR, EQUATORIAL GUINEA, FIJI, FINLAND, FRANCE, GABON, GAMBIA, GEORGIA, GERMANY, GHANA, GREECE, GRENADA, GUATEMALA, GUINEA, GUINEA-BISSAU, GUYANA, HAITI, HONDURAS, HUNGARY, ICELAND, INDIA, INDONESIA, IRAN (ISLAMIC REPUBLIC OF), IRAQ, IRELAND, ITALY, JAMAICA, JAPAN, JORDAN, KAZAKHSTAN, KENYA, KIRIBATI, KUWAIT, KYRGYZSTAN, LAO PEOPLE'S DEMOCRATIC REPUBLIC, LATVIA, LEBANON, LESOTHO, LIBERIA, LIBYA, LITHUANIA, LUXEMBOURG, MADAGASCAR, MALAWI, MALAYSIA, MALDIVES, MALI, MALTA, MARSHALL ISLANDS, MAURITANIA, MAURITIUS, MEXICO, MICRONESIA (FEDERATED STATES OF), MONTENEGRO, MOROCCO, MOZAMBIQUE, MYANMAR, NAMIBIA, NAURU, NETHERLANDS, NEW ZEALAND, NICARAGUA, NIGER, NIGERIA, NORWAY, PAKISTAN, PALAU, PAPUA NEW GUINEA, PARAGUAY, PERU, PHILIPPINES, POLAND, PORTUGAL, QATAR, REPUBLIC OF CAMEROON, REPUBLIC OF KOREA, REPUBLIC OF MOLDOVA, ROMANIA, RUSSIAN FEDERATION, RWANDA, SAINT KITTS AND NEVIS, SAINT LUCIA, SAINT VINCENT AND THE GRENADINES, SAMOA, SAN MARINO, SAO TOME AND PRINCIPE, SENEGAL, SERBIA, SEYCHELLES, SIERRA LEONE, SINGAPORE, SLOVAKIA, SLOVENIA, SOLOMON ISLANDS, SOMALIA, SOUTH SUDAN, SOUTH AFRICA, SPAIN, SRI LANKA, SUDAN, SURINAME, SWAZILAND, SWEDEN, SWITZERLAND, SYRIAN ARAB REPUBLIC, TAJIKISTAN, THAILAND, TIMOR-LESTE, TOGO, TONGA, TRINIDAD AND TOBAGO, TUNISIA, TURKEY, TURKMENISTAN, TUVALU, UGANDA, UKRAINE, UNITED ARAB EMIRATES, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, UNITED REPUBLIC OF TANZANIA, URUGUAY, UZBEKISTAN, VANUATU, VENEZUELA (BOLIVARIAN REPUBLIC OF), VIET NAM, ZAMBIA, AND ZIMBABWE

PROTEST and DEMAND

9 August 2012

BY: THE HAWAIIAN KINGDOM,

which appoints as Agent for purposes of this Protest and Demand His Excellency Dr. David Keanu Sai, Ph.D., its Ambassador-at-large.

AGAINST: One hundred seventy-three (173) member States of the United Nations, being the UNITED STATES OF AMERICA, AFGHANISTAN, ALGERIA, ANGOLA, ANTIGUA AND BARBUDA, ARGENTINA, ARMENIA, AUSTRALIA, AUSTRIA, AZERBAIJAN, BAHAMAS, BAHRAIN, BANGLADESH, BARBADOS, BELARUS, BELGIUM, BELIZE, BENIN, BHUTAN, BOLIVIA (PLURINATIONAL STATE OF), BOTSWANA, BRAZIL, BRUNEI DARUSSALAM, BULGARIA, BURKINA FASO, BURUNDI, CAPE VERDE, CENTRAL AFRICAN REPUBLIC, CHAD, CHILE, COLOMBIA, COMOROS, CONGO, COSTA RICA, COTE D'IVOIRE, CUBA, CYPRUS, CZECH REPUBLIC, DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, DEMOCRATIC REPUBLIC OF THE CONGO, DENMARK, DJIBOUTI, DOMINICA, DOMINICAN REPUBLIC, ECUADOR, EGYPT, EL SALVADOR, EQUATORIAL GUINEA, FIJI, FINLAND, FRANCE, GABON, GAMBIA, GEORGIA, GERMANY, GHANA, GREECE, GRENADA, GUATEMALA, GUINEA, GUINEA-BISSAU, GUYANA, HAITI, HONDURAS, HUNGARY, ICELAND, INDIA, INDONESIA, IRAN (ISLAMIC REPUBLIC OF), IRAQ, IRELAND, IRAQ, ITALY, JAMAICA, JAPAN, JORDAN, KAZAKHSTAN, KENYA, KIRIBATI, KUWAIT, KYRGYZSTAN, LAO PEOPLE'S DEMOCRATIC REPUBLIC, LATVIA, LEBANON, LESOTHO, LIBERIA, LIBYA, LITHUANIA, LUXEMBOURG, MADAGASCAR, MALAWI, MALAYSIA, MALDIVES, MALI, MALTA, MARSHALL ISLANDS, MAURITANIA, MAURITIUS, MEXICO, MICRONESIA (FEDERATED STATES OF), MONTENEGRO, MOROCCO, MOZAMBIQUE, MYANMAR, NAMIBIA, NAURU, NETHERLANDS, NEW ZEALAND, NICARAGUA, NIGER, NIGERIA, NORWAY, PAKISTAN, PALAU, PAPUA NEW GUINEA, PARAGUAY, PERU, PHILIPPINES, POLAND, PORTUGAL, QATAR, REPUBLIC OF CAMEROON, REPUBLIC OF KOREA, REPUBLIC OF MOLDOVA, ROMANIA, RUSSIAN FEDERATION, RWANDA, SAINT KITTS AND NEVIS, SAINT LUCIA, SAINT VINCENT AND THE GRENADINES, SAMOA, SAN MARINO, SAO TOME AND PRINCIPE, SENEGAL, SERBIA, SEYCHELLES, SIERRA LEONE, SINGAPORE, SLOVAKIA, SLOVENIA, SOLOMON ISLANDS, SOMALIA, SOUTH SUDAN, SOUTH AFRICA, SPAIN, SRI LANKA, SUDAN, SURINAME, SWAZILAND, SWEDEN, SWITZERLAND, SYRIAN ARAB REPUBLIC, TAJIKISTAN, THAILAND, TIMOR-LESTE, TOGO, TONGA, TRINIDAD AND TOBAGO, TUNISIA, TURKEY,

TURKMENISTAN, TUVALU, UGANDA, UKRAINE, UNITED ARAB EMIRATES, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, UNITED REPUBLIC OF TANZANIA, URUGUAY, UZBEKISTAN, VANUATU, VENEZUELA (BOLIVARIAN REPUBLIC OF), VIET NAM, ZAMBIA, ZIMBABWE.

I. LEGAL GROUNDS

(1) “A state which is not a Member of the United Nations may bring to the attention of the...General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter,” Article 35(2), U.N. Charter. The Hawaiian Kingdom accepts the obligations of pacific settlement (Annex 1).

(2) Violations of the principle that a State may not exercise its authority on the territory of another State and of the principle of sovereign equality among all States whether members or non-members of the United Nations.

(3) “There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character,” Article 12, *Responsibility of States for International Wrongful Acts* (2001).

(4) “The State responsible for the internationally wrongful act is under an obligation (a) to cease that act, if it is continuing; (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require,” Article 30, *Responsibility of States for International Wrongful Acts* (2001).

(5) “The responsible State is under an obligation to make full reparation for the injury caused by the international wrongful act,” Article 31(1), *Responsibility of States for International Wrongful Acts* (2001).

(6) “Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State,” Article 31(2), *Responsibility of States for International Wrongful Acts* (2001).

(7) “The responsible State may not rely on the provisions of its internal law as justification for failure to comply with the obligations,” Article 32, *Responsibility of States for International Wrongful Acts* (2001).

(8) “Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination,” Article 34, *Responsibility of States for International Wrongful Acts* (2001).

(9) “A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfill the obligation,” Article 40(2), *Responsibility of States for International Wrongful Acts* (2001).

(10) “States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40,” Article 41(1), *Responsibility of States for International Wrongful Acts* (2001).

(11) “No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation,” Article 41(2), *Responsibility of States for International Wrongful Acts* (2001).

II. NATURE OF THE CLAIM

This case arises out of the prolonged and illegal occupation of the entire territory of the Hawaiian Kingdom by the United States of America since the Spanish-American War on August 12, 1898, and the failure on the part of the United States of America to establish a direct system of administering the laws of the Hawaiian Kingdom. There are currently 119 United States military sites throughout the Hawaiian Islands encompassing 230,622 acres of land under the command and control of the United States Pacific Command whose headquarters is situated on the Island of O‘ahu. These military sites have been illegally established within the territory of the Hawaiian Kingdom and have consequently placed the Hawaiian State and its population in grave danger from military attack by foreign States, *e.g.* Japan’s military attack of United States military sites on the Island of O‘ahu on December 7, 1941, and the threat of missile attacks from China, the Democratic People’s Republic of Korea, and the Russian Federation.

The United States disguised its occupation of the Hawaiian Kingdom as if a treaty of cession annexed the Hawaiian Islands. There is no treaty. For the past 114 years, the United States of America has committed a serious international wrongful act and deliberately misled the international community that the Hawaiian Islands had been incorporated into the territory of the United States. It has unlawfully imposed its internal laws over Hawaiian territory, which includes its territorial seas, its exclusive economic zone, and its airspace, in violation of its treaties with the Hawaiian Kingdom, the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law.

The Hawaiian Kingdom herein files this Protest and Demand as a non-member State pursuant to Article 35(2) of the United Nations Charter against the aforementioned member States for the violation of treaties and international law and calls upon the United Nations General Assembly:

1. To ensure the United States of America comply with the 1893 *Lili‘uokalani assignment & Agreement of restoration*, 1899 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law, as hereinafter described;
2. To ensure that the United States of America establishes a military government, to include tribunals, to administer and enforce the civil and penal laws of the Hawaiian Kingdom pursuant to the 1893 *Lili‘uokalani*

assignment and Article 43 of the 1907 Hague Convention, IV, as hereinafter described;

3. To ensure that all member States of the United Nations shall not recognize as lawful the United States of America's presence and authority within the territory, territorial seas, exclusive economic zone and airspace of the Hawaiian Kingdom, except for its temporary and limited authority vested under the 1893 *Lili'uokalani assignment* and Article 43 of the 1907 Hague Convention, IV, as hereinafter described;
4. To ensure full reparation for the injury caused by the serious breach of obligations and internationally wrongful acts in the form of restitution, compensation and satisfaction, whether singly or in combination.

III. PRELIMINARY STATEMENT

The Hawaiian Kingdom received the recognition of its independence and sovereignty by joint proclamation from the United Kingdom and France on November 28, 1843 (Annex 2), and by the United States of America on July 6, 1844 (Annex 3). At the time of the recognition of Hawaiian independence, the Hawaiian Kingdom's government was a constitutional monarchy that developed a complete system of laws, both civil and criminal, and have treaty relations of a *most favored nation* status with the major powers of the world, including the United States of America.

A. PERMANENT POPULATION

According to Professor Crawford, "If States are territorial entities, they are also aggregates of individuals. A permanent population is thus necessary for statehood, though, as in the case of territory, no minimum limit is apparently prescribed."¹ Professor Giorgetti explains, "Once recognized, States continue to exist and be part of the international community even if their population changes. As such, changes in one of the fundamental requirements of statehood do not alter the identity of the State once recognized."²

The population of the Hawaiian Islands can but be studied by one unfamiliar with the native tongue from its several census reports. A census is taken every six years. The last report is for the year 1890. From this it appears that the whole population numbers 89,990. This number includes natives, or, to use another designation, Kanakas, half-castes (persons containing an admixture of other than native blood in any proportion with it), Hawaiian-born foreigners of all races or nationalities other than natives,

¹ James Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford, 2006), 52.

² Chiara Giorgetti, *A Principled Approach to State Failure* (Martinus Nijhoff Publishers, 2010), 55

Americans, British, Germans, French, Portuguese, Norwegians, Chinese, Polynesians, and other nationalities.

Americans number 1,928; natives and half-castes, 40,612; Chinese, 15,301; Japanese, 12,360; Portuguese, 8,602; British, 1,344; Germans, 1,034; French, 70; Norwegians, 227; Polynesians, 588; and other foreigners 419.

It is well at this point to say that of the 7,495 Hawaiian-born foreigners 4,117 are Portuguese, 1,701 Chinese and Japanese, 1,617 other white foreigners, and 60 of other nationalities.³

The permanent population has exceedingly increased since the 1890 census and according to the last census in 2011 by the United States that number is now at 1,374,810.⁴ International law, however, protects the *status quo* of the national population of an occupied State during occupation. According to Professor von Glahn, “the nationality of the inhabitants of occupied areas does not ordinarily change through the mere fact that temporary rule of a foreign government has been instituted, inasmuch as military occupation does not confer *de jure* sovereignty upon an occupant. Thus under the laws of most countries, children born in territory under enemy occupation possess the nationality of their parents, that is, that of the legitimate sovereign of the occupied area.”⁵ Any individual today who is a direct descendent of a person who lawfully acquired Hawaiian citizenship prior to the U.S. occupation that began at noon on August 12, 1898, is a Hawaiian subject. Hawaiian law recognizes all others who possess the nationality of their parents as part of the alien population.

B. DEFINED TERRITORY

According to Judge Huber, “Territorial sovereignty...involves the exclusive right to display the activities of a State.”⁶ Crawford also states, “Territorial sovereignty is not ownership of but governing power with respect to territory.”⁷

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,

³ United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawaii: 1894-95, (Government Printing Office, 1895), 539

⁴ *2011 Population Estimates*. United States Census Bureau, Population Division.

⁵ Gehard von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (University of Minnesota Press 1957), 60.

⁶ *Island of Palmas Case*, 1 RIAA 829, 839 (Arbitrator Huber) 4 ILR 3 (1928), 103, 108, 110, 111, 113, 114, 418, 479, 482, 487, 492.

⁷ Crawford, 56.

while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws.⁸

The Islands constituting the defined territory of the Hawaiian Kingdom on January 17, 1893, together with its territorial seas whereby the channels between adjacent Islands are contiguous, its exclusive economic zone of two hundred miles, and its air space, include:

<u>Island:</u>	<u>Location:</u>	<u>Square Miles/Acreage:</u>
Hawai‘i	19° 30' N 155° 30' W	4,028.2 / 2,578,048
Maui	20° 45' N 156° 20' W	727.3 / 465,472
O‘ahu	21° 30' N 158° 00' W	597.1 / 382,144
Kaua‘i	22° 03' N 159° 30' W	552.3 / 353,472
Molokai	21° 08' N 157° 00' W	260.0 / 166,400
Lana‘i	20° 50' N 156° 55' W	140.6 / 89,984
Ni‘ihau	21° 55' N 160° 10' W	69.5 / 44,480
Kaho‘olawe	20° 33' N 156° 35' W	44.6 / 28,544
Nihoa	23° 06' N 161° 58' W	0.3 / 192
Molokini	20° 38' N 156° 30' W	0.04 / 25.6
Lehua	22° 01' N 160° 06' W	0.4 / 256
Ka‘ula	21° 40' N 160° 32' W	0.2 / 128
Laysan	25° 50' N 171° 50' W	1.6 / 1,024
Lisiansky	26° 02' N 174° 00' W	0.6 / 384
Palmyra	05° 52' N 162° 05' W	4.6 / 2,944
Ocean	28° 25' N 178° 25' W	<u>0.4 / 256</u>
TOTAL:		6,427.74 / 4,113,753.6

C. GOVERNMENT

According to Crawford, “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.”⁹ Since 1864, the Hawaiian Kingdom fully adopted the separation of powers doctrine in its constitution, being the cornerstone of constitutional governance.

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 31. To the [Queen] belongs the executive power.

⁸ Compiled Laws of the Hawaiian Kingdom (1884), §6.

⁹ Crawford, 56.

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. (Annex 4).

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 Article 26, Hawaiian Constitution, “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.” (Annex 4).

2. To Maintain Diplomatic Ties with Other Sovereigns

Maintaining diplomatic ties with other States is vested in the office of the Monarch pursuant to Article 30, Hawaiian Constitution, “It is the [Queen’s] Prerogative to receive and acknowledge Public Ministers...” (Annex 4). The officer responsible for maintaining diplomatic ties with other States is the 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.” §437, Compiled Laws of the Hawaiian Kingdom. (Annex 5). 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.” §441, Compiled Laws of the Hawaiian Kingdom. (Annex 5).

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 and Maintain Diplomatic Relations with other States

Article 29, Hawaiian Constitution, provides, “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.” (Annex 4). As a result of the United States of America’s recognition of Hawaiian independence, the Hawaiian Kingdom entered into a Treaty of Friendship, Commerce and Navigation, Dec. 20th 1849 (Annex 6); Treaty of Commercial Reciprocity, Jan. 13, 1875 (Annex 7); Postal Convention Concerning Money Orders, Sep. 11, 1883 (Annex 8); and a Supplementary Convention to the 1875 Treaty of Commercial Reciprocity, Dec. 6, 1884 (Annex 9).

The Hawaiian Kingdom also entered into treaties with Austria-Hungary, June 18, 1875; Belgium, October 4, 1862; Bremen (succeeded by Germany), March 27, 1854; Denmark, October 19, 1846; France, September 8, 1858; French Tahiti, November 24, 1853; Germany, March 25, 1879; the United Kingdom of Great Britain and Northern Ireland) March 26, 1846; New South Wales (now Australia), March 10, 1874 (Annex 17); Hamburg (succeeded by Germany), January 8, 1848) (Annex 18); Italy, July 22, 1863; Japan, August 19, 1871, January 28, 1886; Netherlands, October 16, 1862; Portugal, May 5, 1882; Russia, June 19, 1869; Samoa, March 20, 1887; Spain, October 9, 1863; Sweden-Norway (now separate States), April 5, 1855; and Switzerland, July 20, 1864.

Foreign Legations accredited to the Court of the Hawaiian Kingdom in the city of Honolulu included the United States of America, Portugal, Great Britain, France and Japan.

Foreign Consulates in the Hawaiian Kingdom included the United States of America, Italy, Chile, Germany, Sweden-Norway, Denmark, Peru, Belgium, Netherlands, Spain, Austria-Hungary, Russia, Great Britain, Mexico and China.

Hawaiian Legations accredited to foreign States included the United States of America in the city of Washington, D.C.; Great Britain in the city of London; France in the city of Paris, Russia in the city of Saint Petersburg; Peru in the city of Lima; and Chile in the city of Valparaiso.

Hawaiian Consulates in foreign States included the United States of America in the cities of New York, San Francisco, Philadelphia, San Diego, Boston, Portland, Port Townsend and Seattle; Mexico in Mexico city and the city of Manzanillo; Guatemala; Peru in the city of Callao; Chile in the city of Valparaiso; Uruguay in the city of Monte Video; Philippines (former Spanish territory) in the city of Iloilo and Manila; Great Britain in the cities of London, Bristol, Hull, Newcastle on Tyne, Falmouth, Dover,

Cardiff and Swansea, Edinburgh and Leith, Glasgow, Dundee, Queenstown, Belfast; Ireland (former British territory) in the cities of Liverpool, and Dublin; Canada (former British territory) in the cities of Toronto, Montreal, Bellville, Kingston Rimouski, St. John's, Varmouth, Victoria, and Vancouver; Australia in the cities of Sydney, Melbourne, Brisbane, Hobart, and Launceston; New Zealand (former British territory) in the cities of Auckland and Dunedin; China in the cities of Hong Kong and Shanghai; France in the cities of Paris, Marseilles, Bordeaux, Dijon, Libourne and Papeete; Germany in the cities of Bremen, Hamburg, Frankfort, Dresden and Karlsruhe; Austria in the city of Vienna; Spain in the cities of Barcelona, Cadiz, Valencia Malaga, Cartegena, Las Palmas, Santa Cruz and Arrecife de Lanzarote; Portugal in the cities of Lisbon, Oporto Madeira, and St. Michaels; Cape Verde (former Portuguese territory) in the city of St. Vincent; Italy in the cities of Rome, Genoa, and Palermo; Netherland in the cities of Amsterdam and Dordrecht; Belgium in the cities of Antwerp, Ghent, Liege and Bruges; Sweden in the cities of Stockholm, Lyskil, and Gothenburg; Norway in the city of Oslo (formerly known as Kristiania); Denmark in the city of Copenhagen; and Japan in the city of Tokyo.

IV. STATEMENT OF THE FACTS

A. THE *LILI'UOKALANI* ASSIGNMENT OF EXECUTIVE POWER & THE AGREEMENT OF RESTORATION OF THE HAWAIIAN KINGDOM GOVERNMENT

“Governmental authority,” states Crawford, “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.”¹⁰ 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 under threat of war under the following protest.

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.

¹⁰ Crawford, 56.

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. (Annex 10, at 461).

1. Presidential Investigation initiated by President Cleveland

United States President Cleveland's investigation found that the United States Legation accredited to the Hawaiian Kingdom, together with United States Marines and Naval personnel, were directly responsible for the illegal overthrow of the Hawaiian government with the ultimate goal of transferring the Hawaiian Islands to the United States from an installed government.¹¹ U.S. Special Commissioner Blount reported that, "in pursuance of a prearranged plan, the Government thus established hastened off commissioners to Washington to make a treaty for the purpose of annexing the Hawaiian Islands to the United States."¹² The report also detailed the culpability of the United States government in violating international laws, as well as Hawaiian State territorial sovereignty.

President Cleveland described the United States' action as an "act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress."¹³ Thus he acknowledged that through such acts the government of a peaceful and friendly people was overthrown. Cleveland further stated that 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."¹⁴ According Professor Marek:

It is a well-known rule of customary international law that third States are under a clear duty of non-intervention and non-interference in civil strife within a State. Any such interference is an unlawful act, even if, far from taking the form of military assistance to one of the parties, it is merely confined to premature recognition of the rebel government.¹⁵

¹¹ United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawaii: 1894-95, (Government Printing Office 1895), 567, [hereafter Executive Documents]. Reprinted at 1 *Hawaiian Journal of Law & Politics* 136 (Summer 2004).

¹² *Id.*, 587.

¹³ *Id.*, 456. Reprinted at 1 *Hawaiian Journal of Law & Politics* 201 (Summer 2004).

¹⁴ *Id.*

¹⁵ Krystyna Marek, *Identity and Continuity of States in Public International Law*, 2nd ed., (Librairie Droz 1968), 64.

In a dispatch to United States Minister Plenipotentiary Albert Willis, assigned to the Hawaiian Kingdom, on October 18, 1893, U.S. Secretary of State Gresham apprised Willis 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. (Annex 10, at 463-464).

In the initial meeting with U.S. Minister Willis on November 13, 1893, at the U.S. Legation in Honolulu, Queen Lili'uokalani refused to grant amnesty and cited Chapter VI—Treason, Hawaiian Penal Code.

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.

9. Whoever shall commit the crime of treason, shall suffer the punishment of death; and all his property shall be confiscated to the government. (Annex 11).

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. (Annex 12, 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. (Annex 12, at 1283-1284).

2. *Settlement by Executive Agreements through Exchange of Notes*

According to Professor Garner, “Agreements in the form of an *exchange of notes* between certain high officials acting on behalf of States, usually their Ministers of Foreign Affairs or diplomatic representatives are numerous... They are employed for a variety of purposes and, like instruments which are designated as ‘treaties’, they may deal with any matter which is a proper subject of international regulation. One of their most common objects is to record the understandings of the parties to a treaty which they have previously entered into; but they may record an entirely new agreement, sometimes one which has been reached as a result of negotiation. While the purpose of an agreement effected by any *exchange of notes* may not differ from that of instruments designated by other names, it is strikingly different in its form from a ‘treaty’ or a ‘convention.’ Unlike a treaty, the relations which it establishes or seeks to establish is recorded, not in a single highly formalized instrument, but in two or more letters usually called ‘notes,’ signed by Ministers or other officials.”¹⁶ Dr. Myers explains, “*Exchange of notes* is the most flexible form of a treaty... The exchange consists of an offer and an acceptance... The offering instrument contains a text of the proposed agreement and the acceptance invariably repeats it verbatim, with assent.”¹⁷

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. 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. *New York Tribune*, January 14, 1894 (Annex 13); *St. Paul Sunday Globe newspaper*, January 14, 1894 (Annex 14); *The Princeton Union newspaper*, January 18, 1894 (Annex 15); and *Hawai‘i Holomua newspaper*, January 24, 1894 (Annex 16).

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

¹⁶ 29 *American Journal of International Law Supplement* 698 (1935).

¹⁷ Denys P. Myers, *The Names and Scope of Treaties*, 51 *American Journal of International Law* 590 (1957).

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 Professor Wright, the President binds “himself and his successors in office by executive agreements.”¹⁸

President Cleveland failed to follow through in his commitment to administer Hawaiian law and re-instate the constitutional government as a result of partisan wrangling in the U.S. Congress.¹⁹ In a deliberate move to further isolate the Hawaiian Kingdom from any assistance by other States and treaty partners and to reinforce and protect the puppet government installed by U.S. officials, the Senate and House of Representatives each passed similar resolutions in 1894 strongly warning other countries “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.”²⁰

The Hawaiian Kingdom was thrown into civil unrest as a result. Five years passed before Cleveland’s presidential successor, William McKinley, entered into a second treaty of cession with the same individuals who participated in the illegal overthrow with the U.S. legation in 1893, and were now calling themselves the Republic of Hawai’i. This second treaty was signed on June 16, 1897 in Washington, D.C., but would “be taken up immediately upon the convening of Congress next December.”²¹

3. *Protests Prevent Second Attempt to Annex Hawaiian Islands by Treaty*

Queen Lili’uokalani was in the United States at the time of the signing of the treaty and protested the second annexation attempt of the country. While in Washington, D.C., the Queen filed a diplomatic protest with the United States Department of State on June 17, 1897. The Queen stated, in part:

I, Lili’uokalani of Hawai’i, by the will of God named heir apparent on the tenth day of April, A.D. 1877, and by the grace of God Queen of the Hawaiian Islands on the seventeenth day of January, A.D. 1893, do hereby protest against the ratification of a certain treaty, which, so I am informed, has been signed at Washington by Messrs. Hatch, Thurston, and Kinney, purporting to cede those Islands to the territory and dominion of the United States. I declare

¹⁸ Quincy Wright, *The Control of American Foreign Relations*, (The MacMillan Co., 1922), 235.

¹⁹ Ralf Kuykendall, *The Hawaiian Kingdom: 1874-1893, The Kalakaua Dynasty*, vol. III (Honolulu: University of Hawai’i Press 1967), 647.

²⁰ Senate Resolution, May 31, 1894, 53rd Congress, 2nd Session, vol. 26.

²¹ “Hawaiian Treaty to Wait—Senator Morgan Suggests that It Be Taken Up at This Session Without Result.” *The New York Times*, 3 (July 25, 1897).

such a treaty to be an act of wrong toward the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, in violation of international rights both toward my people and toward friendly nations with whom they have made treaties, the perpetuation of the fraud whereby the constitutional government was overthrown, and, finally, an act of gross injustice to me.²² (Annex 17)

Hawaiian political organizations in the Islands filed additional protests with the Department of State in Washington, D.C. These organizations were the Men and Women's Hawaiian Patriotic League (Hui Aloha 'Aina), and the Hawaiian Political Association (Hui Kalai'aina).²³ (Annex 18) In addition, a petition of 21,269 signatures of Hawaiian subjects and resident aliens protesting annexation was filed with the Senate when it convened in December 1897.²⁴ (Annex 19) The Senate was unable to garner enough votes to ratify the so-called treaty, but events would quickly change as war loomed between the United States of America and Spain.

The legal significance of these protests creates a fundamental bar to any future claim the United States may assert over the Hawaiian Islands by acquisitive *prescription*. "*Prescription*," according to Professor Gerhard von Glahn, "means that a foreign state occupies a portion of territory claimed by a state, encounters no protest by the 'owner,' and exercises rights of sovereignty over a long period of time."²⁵

4. Illegal Seizure and Occupation of the Hawaiian Islands by the United States of America during the Spanish-American War

Unable to procure a treaty of cession from the Hawaiian Kingdom government acquiring the Hawaiian Islands as required by international law, Congress enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War (Annex 20) as a war measure. The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War, and the occupation was justified as a military necessity in order to reinforce and supply the troops that have been occupying the Spanish colonies of Guam and the Philippines since May 1, 1898. The justification as a war measure was clearly displayed in a secret session of the United States Senate on May 31, 1898 (Annex 21). Following the close of the Spanish-American War by the Treaty of Paris signed December 10, 1898,²⁶ U.S. troops remained

²² Liliuokalani, *Hawaii's Story by Hawaii's Queen* (Charles E. Tuttle Co., Inc. 1964), 354. Reprinted at 1 *Hawaiian Journal of Law & Politics* 227 (Summer 2004).

²³ Tom Coffman, *Nation Within: The Story of America's Annexation of the Nation of Hawai'i* (Tom Coffman/Epicenter 1999), 268.

²⁴ Noenoe Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism* (Duke University Press 2004), 145-159. See also Coffman, 273-287.

²⁵ Gerhard von Glahn's, *Law Among Nations*, 6th ed., (Macmillan Publishing Company 1992), 371.

²⁶ 30 U.S. Stat. 1754

in the Hawaiian Islands and continued its occupation to date in violation of international law and the 1893 *Lili'uokalani assignment* and the *Agreement of restoration*.

Furthering the illegal occupation, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i* on April 30, 1900 (Annex 22); and on March 18, 1959, President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai'i into the Union* (Annex 23). These laws, which include the 1898 joint resolution of annexation, have no extraterritorial effect and stand in direct violation of the *Lili'uokalani assignment* and *Agreement restoration*, being international compacts, the 1907 Hague Convention, IV, and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV.

5. United States Misrepresents Hawai'i before the United Nations General Assembly

In 1946, prior to the passage of the Statehood Act, the United States further misrepresented its relationship with Hawai'i when the United States ambassador to the United Nations identified Hawai'i as a non-self-governing territory under the administration of the United States since 1898. In accordance with Article 73(e) of the U.N. Charter, the United States ambassador reported Hawai'i as a non-self-governing territory.²⁷ The fundamental flaw is that Hawai'i should have never been placed on the list in the first place, because it already achieved self-governance as a sovereign independent State beginning in 1843 and acknowledged by the Arbitral Tribunal in *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, in 2001. In *Larsen*, the Tribunal determined, "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." (Annex 24, p. 581).

Hawai'i was deliberately treated as a non-self-governing territory or colonial possession in order to conceal the United States' prolonged occupation of an independent and sovereign State for military purposes. The reporting of Hawai'i as a non-self-governing territory also coincided with the United States establishment of the military headquarters for the Pacific Command (PACOM) on the Island of O'ahu. If the United Nations had been aware of Hawai'i's continued legal status as an occupied and neutral State, member States of the United Nations would have prevented the United States from maintaining their military presence.

The initial Article 73(e) list comprised of non-sovereign territories under the control of sovereign States such as Australia, Belgium, Denmark, France, Netherlands, New Zealand, United Kingdom and the United States. In addition to Hawai'i, the U.S. also reported its territories of Alaska, American Samoa, Guam, Panama Canal Zone, Puerto Rico and the Virgin Islands. The U.N. General Assembly, in a resolution entitled "Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter," defined

²⁷ *Transmission of Information under Article 73e of the Charter*, December 14, 1946, United Nations General Assembly Resolution 66(I).

self-governance in three forms: a sovereign independent State; free association with an independent State; or integration with an independent State.²⁸ None of the territories on the list of non-self-governing territories, with the exception of Hawai'i, were recognized sovereign States.

Despite past misrepresentations of Hawai'i before the United Nations by the United States, there are two facts that still remain. First, inclusion of Hawai'i on the United Nations list of non-self-governing territories was an inaccurate depiction of a sovereign State whose rights had been violated; and, second, Hawai'i remains a sovereign and independent State despite the illegal overthrow of its government in 1893 and the prolonged occupation of its territory for military purposes since 1898.

B. ESTABLISHING THE *ACTING* GOVERNMENT OF THE HAWAIIAN KINGDOM

On December 10, 1995, a general partnership was formed in compliance with an *Act to Provide for the Registration of Co-partnership Firms*, 1880. (Annex 25). The partnership was named the Perfect Title Company (PTC), and functioned as a land title abstracting company. (Annex 26). Since the enactment of the 1880 Co-partnership Act, members of co-partnership firms within the Kingdom registered their articles of agreements in the Bureau of Conveyances, being a part of the Interior department of the Hawaiian Kingdom. This same Bureau of Conveyances continues to exist and is presently administered by the United States of American, by its political subdivision, the State of Hawai'i. The law requires a notary public to acknowledge all documents before being registered with the Bureau,²⁹ but there have been no lawful notaries public in the Islands since 1893. All State of Hawai'i notaries public are commissioned under and by virtue of United States law. Therefore, in order for the partners of PTC to get their articles of agreement registered in the Bureau of Conveyances in compliance with the 1880 co-partnership statute, the following protest was incorporated and made a part of PTC's articles of agreement, which stated:

Each partner also agrees that the business is to be operated in strict compliance to the business laws of the Hawaiian Kingdom as noted in the "Compiled Laws of 1884" and the "session laws of 1884 and 1886." Both partners are native Hawaiian subjects by birth and therefore are bound and subject to the laws above mentioned. And it is further agreed by both partners that due to the filing requirements of the Bureau of Conveyances to go before a

²⁸ *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter*, December 15, 1960, United Nations Resolution 1541 (XV).

²⁹ Hawai'i Revised Statutes, §502-41.

foreign notary public within the Hawaiian Kingdom, they do this involuntarily and against their will.³⁰

PTC commenced on December 10, 1995, but there was no *military* government to ensure PTC's compliance with the co-partnership statute from that date. The registration of co-partnerships creates a contract between co-partnerships on the one hand, and the Minister of the Interior, representing the government, on the other. It is obligatory for co-partnerships to register their articles of agreement with the Minister of the Interior, and for the Minister of the Interior, it is his duty to ensure that co-partnerships maintain their compliance with the statute. This is a contractual relationship, whereby:

there must be a promise binding the person[s] subject to the obligation; and in order to give a binding force to the promise the obligation must come within the sphere of Agreement. There must be an acceptance of the promise by the person to whom it is made, so that by their mutual consent the one is bound to the other. A Contract then springs from the offer of a promise and its acceptance.³¹

The registration of co-partnerships is the offer of the promise by its members to abide by the obligation imposed by the statute, and the acceptance of this offer by the Interior department creates a contractual relationship whereby "one is bound to the other." Section 7 of the 1880 Co-partnership Act clearly outlines the obligation imposed upon the members of co-partnerships in the Kingdom, which states:

The members of every co-partnership who shall neglect or fail to comply with the provisions of this law, shall severally and individually be liable for all the debts and liabilities of such co-partnership and may be severally sued therefore, without the necessity of joining the other members of the co-partnership in any action or suit, and shall also be severally liable upon conviction, to a penalty not exceeding five dollars for each and every day while such default shall continue; which penalties may be recovered in any Police or District Court.³²

The partners of PTC desired to establish a legitimate co-partnership pursuant to Hawaiian Kingdom law and in order for the title company to exist as a legal co-partnership firm, the government had to be reestablished in an *acting* capacity in order to serve as a necessary party to the contractual relationship created under and by virtue of the statute. An acting official is "not an appointed incumbent, but merely a *locum tenens*,

³⁰ Co-partnership Agreement establishing Perfect Title Company, December 10, 1995, document no. 95-153346, Hawai'i Bureau of Conveyances.

³¹ Sir William R. Anson, *Principles of the Law of Contract* (Callaghan and Company, 1880), 11.

³² Compiled Laws, 649.

who is performing the duties of an office to which he himself does not claim title.”³³ It is an official that temporarily assumes the duties and authority of government.

The last legitimate Hawaiian Legislative Assembly of 1886 was prevented from reconvening as a result of the 1887 revolution. The subsequent Legislative Assembly of 1887 was based on an illegal constitution, which altered existing voting rights, and led to the illegal election of the 1887 Legislature. As a result, there existed no legitimate Nobles in the Legislative Assembly when Queen Lili’uokalani ascended to the Office of Monarch in 1891, and therefore, the Queen was unable to obtain confirmation for her named successors from those Nobles of the 1886 Legislative Assembly as required by the 1864 Constitution. Tragically, when the Queen died on November 11, 1917, there were no lawful successors to the Throne. In the absence of a confirmed successor to the Throne by the Nobles of the Legislative Assembly, Article 33 of the Constitution of 1864 provides:

“should a Sovereign decease...and having made no last Will and Testament, the Cabinet Council at the time of such decease 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.” (Annex 4)

Hawaiian law did not assume that the whole of the Hawaiian government would be made vacant, and, consequently, the law did not formalize provisions for the reactivation of the government in extraordinary circumstances. Therefore, a deliberate course of action was taken to re-activate the Hawaiian government by and through its executive branch as officers *de facto*. In view of such an extreme emergency, Professor Oppenheimer states that, “a temporary deviation from the wording of the constitution is justifiable if this is necessary to conserve the sovereignty and independence of the country.”³⁴

When properly interpreted, the 1864 Constitution provides that the Cabinet Council shall be a Council of Regency until a proper Legislative Assembly can be convened to “elect by ballot some native Ali’i [Chief] of the Kingdom as Successor to the Throne.” (Annex 4) It further provides that the Regent or Council of Regency “shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King.” (Annex 4) The Constitution also provides that the Cabinet Council “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

³³ *Black’s Law*, 6th ed. (West Publishing Company 1990), 26.

³⁴ F.E. Oppenheimer, “Governments and Authorities in Exile,” 36 *American Journal of International Law* 581 (1942).

shall be His Majesty's Special Advisers in the Executive affairs of the Kingdom.” (Annex 4)

Interpretation of these constitutional provisions allows for the Minister of Interior to assume the powers vested in the Cabinet Council in the absence of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General, and consequently serve as Regent. This is a similar scenario that took place in 1940 when German forces invaded Belgium and captured King Leopold. As a result, the Belgian cabinet became a government in exile and, as a council of Regency, assumed all powers constitutionally vested in the King. Oppenheimer explains:

As far as Belgium is concerned, the capture of the king did not create any serious constitutional problems. According to Article 82 of the Constitution of February 7, 1821, as amended, the cabinet of ministers have to assume supreme executive power if the King is unable to govern. True, the ministers are bound to convene the House of Representatives and the Senate and to leave it to the decision of the united legislative chambers to provide for a regency; but in view of the belligerent occupation it is impossible for the two houses to function. While this emergency obtains, the powers of the King are vested in the Belgian Prime Minister and the other members of the cabinet.³⁵

The 1880 Co-partnership Act requires members of co-partnerships to register their articles of agreement in the Bureau of Conveyances, which is within the Interior department.³⁶ The Minister of the Interior holds a seat of government as a member of the cabinet council, together with the other ministers. Article 43 of the Constitution provides that, “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.” Necessity dictated that in the absence of any “deputies or clerks” of the Interior department, the partners of a registered co-partnership could assume the duty of the same because of the current state of affairs. Therefore, it was reasonable that partners of a registered co-partnership could assume the powers vested in the Registrar of the Bureau of Conveyances in the absence of the same; then assume the powers vested in the Minister of Interior in the absence of the same; then assume the powers constitutionally vested in the Cabinet Council in the absence of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General; and, finally assume the power constitutionally vested in the Cabinet as a Regency. A regency is defined as “the man or body of men intrusted with the vicarious government of a kingdom during the minority, absence, insanity, or other disability of the [monarch].”³⁷

³⁵ Oppenheimer, 569.

³⁶ Compiled Laws, §1249.

³⁷ Black’s Law, 1282.

With the specific intent of assuming the “seat of Government,” the partners of PTC formed a second partnership called the Hawaiian Kingdom Trust Company (HKTC) on December 15, 1995. (Annex 27). The partners intended that this registered partnership would serve as a provisional surrogate for the Council of Regency. Therefore, and in light of the ascension process explained above, HKTC could then serve as officers *de facto* for the Registrar of the Bureau of Conveyances, the Minister of Interior, the Cabinet Council, and ultimately as the Council of Regency. Article 1 of HKTC 's deed of general partnership provided:

“The above mentioned parties have agreed to form a general partnership under the firm name of Hawaiian Kingdom Trust Company in the business of administering, investigating, determining and the issuing of land titles, whether in fee, or for life, or for years, in such manner as Hawaiian law prescribes... The company will serve in the capacity of *acting* for and on behalf of the Hawaiian Kingdom government. The company has adopted the Hawaiian Constitution of 1864 and the laws lawfully established in the administration of the same. The company is to commence on the 15th day of December, A.D. 1995, and shall remain in existence until the absentee government is re-established and fully operational, upon which all records and monies of the same will be transferred and conveyed over to the office of the Minister of Interior, to have and to hold under the authority and jurisdiction of the Hawaiian Kingdom.”

Thirty-eight deeds of trusts conveyed by Hawaiian subjects to HKTC acknowledged the trust as a company acting for and on behalf of the Hawaiian government and outlined the role of the trust company and its fiduciary duty it had to its beneficiaries.³⁸ (Annex 28). HKTC was not only competent to serve as the *acting* cabinet council, but also possessed a fiduciary duty toward its beneficiaries to serve in that capacity until the government is re-established *de jure* in accordance with the terms of the 1893 Cleveland-Lili’uokalani agreement. According to Pomeroy:

“Active or special trusts are those in which, either from the express direction of the language creating the trust, or from the very nature of the trust itself, the trustees are charged with the performance of active and substantial duties with respect to the control, management, and

³⁸ See Deeds of Trust to the Hawaiian Kingdom Trust Company, a general partnership, Doc. no.'s 96-004246, 96-006277, 96-014116, 96-026387, 96-026388, 96-028714, 96-024845, 96-032930, 96-044551, 96-044550, 96-047382, 96-047380, 96-047379, 96-047381, 96-056981, 96-052727, 96-060519, 96-032728, 96-057667, 96-057668, 96-060520, 96-061209, 96-061207, 96-056980, 96-052729, 96-063384, 96-063385, 96-063382, 96-057664, 96-019923, 96-046712, 96-063386, 96-063382, 96-063383, 96-066996, 96-061208 and 96-046711, State of Hawai’i Bureau of Conveyances.

disposition of the trust property for the benefit of the *cestui que trustent* [beneficiary of a trust]. They may, except when restricted by statute, be created for every purpose not unlawful, and, as a general rule, may extend to every kind of property, real and personal.”³⁹

The purpose of HKTC was two fold; first, to ensure PTC complies with the co-partnership statute, and, second, provisionally serve as the government of the Hawaiian Kingdom. What became apparent was the seeming impression of a conflict of interest, whereby the duty to comply and the duty to ensure compliance was vested in the same two partners of the two companies. Therefore, in order to avoid this apparent conflict of interest, the partners of both PTC and HKTC, reasoned that an *acting* Regent, having no interests in either company, should be appointed to serve as representative of the Hawaiian government. Since HKTC assumed to represent the interests of the Hawaiian government in an acting capacity, the trustees would therefore make the appointment. The trustees looked to Article XXXI, Chapter XI, Title 3 of the Hawaiian Civil Code (Annex 29), whereby the *acting* Regency would be constitutionally authorized to direct the executive branch of the government in the formation and execution of the reconvening of the Legislative Assembly, so that the government could procedurally move from provisional to *de jure*.⁴⁰

1. Acting Government Proclaimed on February 28, 1997

It was agreed that David Keanu Sai, now the present Ambassador-at-large of the *acting* Government and Agent for this Protest and Demand, would be appointed to serve as *acting* Regent, but could not retain an interest in the two companies prior to the appointment. In that meeting, it was agreed upon and decided that Nai’a-Ulumaimalu would replace the aforementioned as trustee of HKTC and partner of PTC. The plan was to maintain the standing of the two partnerships under the co-partnership statute, and not have them lapse into sole-proprietorships. To accomplish this, the Agent would relinquish his entire one-half interest by deed of conveyance in both companies to Lewis (Annex 30); after which Lewis would convey a redistribution of interest to Nai’a-Ulumaimalu (Annex 31), whereby the former would hold a ninety-nine percent interest in the two companies and the latter a one percent interest in the same. In order to have these two transactions take place simultaneously without affecting the standing of the two partnerships, both deeds of conveyance would happen on the same day but won’t take effect until the following day, February 28, 1996. These conveyances were registered in the Bureau of Conveyances in conformity with the 1880 Co-partnership Act.

With the transactions completed, the Trustees then appointed the Agent as *acting* Regent on March 1, 1996, and thereafter filed a notice of this appointment with the Bureau of Conveyances. (Annex 32). Thereafter, HKTC resumed its role as a general partnership within the meaning of the 1880 Co-partnership Act, and no longer served as

³⁹ John Norton Pomeroy, *A Treatise on Equity Jurisprudence as Administered in the United States of America* (Bancroft-Whitney Company, 1907), 553.

⁴⁰ Compiled Laws, 214-234.

“a company *acting* for and on behalf of the Hawaiian Kingdom government” and prepared for the dissolution of the company. On May 15, 1996, the Trustees conveyed by deed all of its right, title and interest acquired by thirty-eight deeds of trust to the *acting* Regent, and stipulated that the company would be dissolved in accordance with the provisions of its deed of general partnership on June 30, 1996. (Annex 33).

The transfer and subsequent dissolution, was made in accordance with section 3 of the 1880 Co-partnership Act, which provides that “whenever any change shall take place in the constitution of any such firm...a statement of such change or dissolution shall also be filed in the said office of the Minister of the Interior, within one month from such...dissolution.”⁴¹ On February 28, 1997, a Proclamation by the *acting* Regent announcing the restoration of the Hawaiian government was printed in the March 9, 1997 issue of the Honolulu Sunday Advertiser newspaper. The proclamation stated, in part, that the:

“Hawaiian Monarchical system of Government is hereby re-established, [and the] Civil Code of the Hawaiian Islands as noted in the Compiled Laws of 1884, together with the session laws of 1884 and 1886 and the Hawaiian Penal Code are in full force. All Hawaiian Laws and Constitutional principles not consistent herewith are void and without effect.”⁴² (Annex 34).

Since the appointment of the *acting* Regent, there have been twenty-six commissions that filled vacancies of the executive and judicial departments. These governmental positions, as statutorily provided, comprise officers *de facto* of the Hawaiian government while under American occupation. Governmental positions that are necessary for the reconvening of the Legislative Assembly in accordance with Title III of the Civil Code would be filled by commissioned officers *de facto*.

In September 1999, the *acting* Regent commissioned Peter Umialiloa Sai as *acting* Minister of Foreign Affairs, Kau’i P. Sai-Dudoit, formerly known as Kau’i P. Goodhue, as *acting* Minister of Finance, and Gary V. Dubin, Esquire, as *acting* Attorney General. At a meeting of the Cabinet Council on September 10, 1999, it was determined by resolution “that the office of the Minister of Interior shall be resumed by David Keanu Sai, thereby absolving the office of the Regent, *pro tempore*, and the same to be replaced by the Cabinet Council as a Council of Regency, *pro tempore*, within the meaning of Article 33 of the Constitution of the Country.” (Annex 35). The Agent serves as Prime Minister and chairman of the *acting* Council of Regency.⁴³

⁴¹ Compiled Laws, 649.

⁴² Proclamation of *Acting* Regent declaring the Hawaiian Monarchical form of Government is re-established, February 28, 1997, published in the March 9, 1997 issue of the Honolulu Sunday Advertiser. Also recorded in its entirety in the Bureau of Conveyances as document no. 97-027541.

⁴³ After the office of Premier (Prime Minister) was repealed by the 1864 Constitution, the term Prime Minister referred to the person who organized government in the Cabinet Council, whether that person was to be the Minister of the Interior, Minister of Foreign Affairs, Minister of Finance or the Attorney General.

Democratic principles are suspended during occupations. Military government is imposed “either by reason of military necessity as a right under international law, or as an obligation under international law,” but regulated by The Hague and Geneva Conventions.⁴⁴ The *acting* Regency was not established out of democratic principles, but out of necessity in order to serve as the provisional organ of the Hawaiian Kingdom and represent its interest during the occupation. It serves as a component of a military government yet to be established, and not the sole organ of the occupied State. The legitimacy of the *acting* Regency is derived strictly from law and legal principles of the Hawaiian Kingdom and functions under the limited legal doctrine of necessity. The right of Hawaiian nationals to reinstate their government, by its statutory provisions, is clear and unequivocal under the international principle of the continuity of the occupied State and its legal order.

The Hawaiian government did not foresee the possibility of its territory subjected to prolonged occupation, where indoctrination and the manipulation of its political history affected the psyche of its national population. Therefore, it did not provide a process for reinstating the government, being the organ of the State, either in exile or within its own territory. But at the same time, it did not place any constitutional or statutory limitations upon the restoration of its government that could serve as a bar to its reinstatement—save for the legal parameters of necessity. The legal basis for the reassertion of Hawaiian governance, by and through a Hawaiian general partnership statute, is clearly extraordinary, but the exigencies of the time demanded it. In the absence of any Hawaiian subjects adhering to the statutory laws of the country as provided for by the country’s constitutional limitations, the abovementioned process was established for the establishment of an *acting* Regency, pending the reconvening of the Legislative Assembly to elect by ballot a Regent or Regency *de jure* as provided for under Article 22 of the Constitution. Professor Marek emphasizes that:

“it is always the legal order of the State which constitutes the legal basis for the existence of its government, whether such government continues to function in its own country or goes into exile; but never the delegation of the territorial State nor any rule of international law other than the one safeguarding the continuity of an occupied State. The relation between the legal order of the territorial State and that of the occupied State...is not one of delegation, but of co-existence.”⁴⁵

⁴⁴ “United States Army and Navy Manual of Military Government and Civil Affairs,” *U.S. Army Field Manual 27-5*, 2 (December 22, 1843).

⁴⁵ Krystyna Marek, *Identity and Continuity of States in Public International Law*, 2nd ed., (Librairie Droz, 1968), 91.

2. *The Doctrine of Necessity Underlies the Legal Basis of the acting Government*

Dr. Wolff states, “in so far as conditions provided for in the constitutional law cannot be complied with owing to the occupation of the country by the enemy, a dispossessed government can act without being compelled to fulfill those conditions.”⁴⁶ Also commenting on exiled governments, Marek explains that, “while the requirement of internal legality must in principle be fulfilled for an exiled government to possess the character of a State organ, minor flaws in such legality are easily cured by the overriding principle of its actual uninterrupted continuity.”⁴⁷ Oppenheimer also explains “such government is the only *de jure* sovereign power of the country the territory of which is under belligerent occupation.”⁴⁸ It follows, *a fortiori*, that when an “occupant fails to share power with the lawful government under the auspices of international law, the latter is not precluded from taking whatever countermeasures it can in order to protect its interests during and after the occupation.”⁴⁹

Bateman states the “duty correlative of the right of political existence, is obviously that of political self-preservation; a duty the performance of which consists in constant efforts to preserve the principles of the political constitution.”⁵⁰ Political self-preservation is adherence to the legal order of the State, whereas national self-preservation is where the principles of the constitution are no longer acknowledged, *i.e.* revolution.⁵¹ The establishment of an *acting* Regent—an officer *de facto*, would be a political act of self-preservation, not revolution, and be grounded upon the legal doctrine of limited necessity. According to Professor de Smith, a British constitutional scholar, deviations from a State’s constitutional order “can be justified on grounds of necessity.”⁵² He continues to explain that “State necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution.”⁵³ Lord Pearce also states that there are certain limitations to the principle of necessity, “namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful... Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign.”⁵⁴

⁴⁶ Ernst Wolff, “The International Position of Dispossessed Governments at Present in England,” 6 *Modern Law Review* 215 (1942-1943).

⁴⁷ Marek, 98.

⁴⁸ Oppenheimer, 568.

⁴⁹ Eyal Benvenisti, *The International Law of Occupation* (Princeton University Press, 1993), 212.

⁵⁰ William O. Bateman, *Political and Constitutional Law of the United States of America* (G.I. Jones and Company, 1876), 22.

⁵¹ *Id.*

⁵² Stanley A. de Smith, *Constitutional and Administrative Law* (Penguin Books, Ltd., 1986), 80.

⁵³ *Id.*

⁵⁴ *Madzimbamuto v. Lardner-Burke* (1969), 1 A.C. 645, 732.

In *Chandrika Persaud v. Republic of Fiji*, Judge Gates took up the matter of the legal doctrine of necessity and drew from the decision in the *Mitchell case*,⁵⁵ which provided that the requisite conditions for the principle of necessity consists of:

1. An imperative necessity must arise because of the existence of exceptional circumstances not provided for in the Constitution, for immediate action to be taken to protect or preserve some vital function of the State;
2. There must be no other course of action reasonably available;
3. Any such action must be reasonably necessary in the interest of peace, order, and good government; but it must not do more than is necessary or legislate beyond that;
4. It must not impair the just rights of citizens under the Constitution; and
5. It must not be one the sole effect and intention of which is to consolidate or strengthen the revolution as such.

Professor Brookfield summarized the principle of necessity as the “power of a Head of State under a written Constitution extends by implication to executive acts, and also legislative acts taken temporarily (that is, until confirmed, varied or disallowed by the lawful Legislature) to preserve or restore the Constitution, even though the Constitution itself contains no express warrant for them.”⁵⁶ Brookfield also explains “such powers are not dependent on the words of a particular Constitution, except in so far as that Constitution designates the authority in whom the implied powers would be found to reside.”⁵⁷

The assumption by private citizens up the chain of constitutional authority in government to the office of Regent, as enumerated under Article 33 of the Constitution, is a *de facto* process born out of necessity. Judge Cooley defines a officer *de facto* “to be one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law,” but rather “comes in by claim and color of right.”⁵⁸ According to Chief Justice Steere, the “doctrine of a *de facto* officer is said to have originated as a rule of public necessity to prevent public mischief and protect the rights of innocent third parties who may be interested in the acts of an assumed officer apparently clothed with authority and the courts have sometimes gone far with delicate reasoning to sustain the rule where threatened rights of third parties were concerned.”⁵⁹ Officers *de facto* are distinguished from a *de facto* government. The former is born out of a *de jure* government under and by virtue of the principle of necessity, while the latter is revolutionary.

⁵⁵ *Mitchell v. Director of Public Prosecutions* (1986), L.R.C. (Const) 35, 88–89.

⁵⁶ F.M. Brookefield, “The Fiji Revolutions of 1987,” *New Zealand Law Journal* 250, 251 (July 1988).

⁵⁷ *Id.*

⁵⁸ Thomas M. Cooley, *A Treatise on the Law of Taxation* (Callaghan and Company, 1876), 185.

⁵⁹ *Carpenter v. Clark*, 217 Michigan 63, 71 (1921).

V. STATEMENT OF THE GROUNDS ON WHICH THE PROTEST AND DEMAND TO THE UNITED NATIONS GENERAL ASSEMBLY IS BASED

The *acting* Government is not seeking *de facto* recognition of the Hawaiian Kingdom, but rather is operating on the *de jure* recognition already afforded the Hawaiian Kingdom since the 19th century. The *acting* Government, as officers *de facto*, is an extension of the original *de jure* government of the Hawaiian Kingdom.

The *acting* Government has represented the Hawaiian Kingdom in arbitral proceedings before the Permanent Court of Arbitration, *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566 (2001) (Annex 24).⁶⁰ The Arbitral Tribunal in the *Larsen* arbitration comprised of Professor James Crawford, SC, Presiding Arbitrator, who at the same time was a member of the United Nations International Law Commission and *Special Rapporteur* on State Responsibility (1997-2001); Professor Christopher Greenwood, QC, Associate Arbitrator, who now serves as a Judge on the International Court of Justice since February 6, 2009; and Gavan Griffith, QC, Associate Arbitrator, who served as former Solicitor General for Australia. The jurisdictional basis of the Permanent Court of Arbitration in *Larsen v. Hawaiian Kingdom* was a dispute between a State and a private person. The *acting* Government also filed a Complaint against the United States of America with the United Nations Security Council on July 5, 2001.⁶¹

On December 12, 2000, the day after oral hearings were held at the Permanent Court of Arbitration, a meeting took place in Brussels between Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium, and the Agent and two deputy agents representing the *acting* Government in the *Larsen case*.⁶² Ambassador Bihozagara attended a hearing before the International Court of Justice on December 8, 2000, (*Democratic Republic of the Congo v. Belgium*), where he was made aware of the Hawaiian arbitration case that was also taking place across the hall in the Peace Palace.⁶³ After inquiring into the case, he called for the meeting and wished to convey that his government was prepared to bring to the attention of the United Nations General Assembly the prolonged occupation of the Hawaiian Kingdom by the United States.

Recalling his country's experience of genocide and the length of time it took for the international community to finally intervene as a matter of international law, Ambassador Bihozagara conveyed to the Agent that the illegal and prolonged occupation of the Hawai'i was unacceptable and should not be allowed to continue. Despite the excitement of the offer, apprehension soon took its hold and the acting government could not, in

⁶⁰ Bederman & Hilbert, "Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawai'i," 95 *American Journal of International Law* 927-933 (2001).

⁶¹ 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); and David Keanu 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).

⁶² Sai, *A Slippery Path*, 130-131.

⁶³ Arrest Warrant of 11 April 2000 (*Democratic Republic of the Congo v. Belgium*), Provisional Measures, Order of 8 December 2000, I.C.J. Reports 2000, p. 182.

good conscience, accept the offer and put Rwanda in a position of reintroducing Hawai‘i’s State continuity before the United Nations, when Hawai‘i’s community, itself, remained ignorant of Hawai‘i’s profound legal position. The Agent thanked Ambassador Bihozagara for his government’s offer, but the timing was premature. The Agent conveyed to the ambassador that the gracious offer could not be accepted without placing Rwanda in a vulnerable position of possible political retaliation by the United States of America, but that the *acting* government should instead focus its attention on continued exposure and education of the occupation both at the national and international levels.

In line with exposure on the international level, the *acting* Government was successful in filing a complaint, as a non-member State, with the United Nations Security Council under the Presidency of China on July 5, 2001.⁶⁴ Professor Dumberry, who’s article in the Chinese Journal of International Law addressed the complaint, stated, “Article 35(2) of the only grants the right for States which are not members of the United Nations to bring disputes and situations ‘to the attention’ of the Security Council; it does not oblige the Security Council to actually ‘consider’ the matter brought to its attention.”⁶⁵ Despite the Security Council’s failure to consider the matter, the complaint, nevertheless, was not challenged nor quashed by the United States of America, but instead, according to Dumberry, “the United States, which is a permanent member of the Security Council, ahs most certainly strongly objected to the inclusion of this Complaint on the agenda, and is likely to have lobbied other States to act in a similar fashion.”⁶⁶ As the Hawaiian complaint remained procedurally unabated, Russian Ambassador Vitaly Churkin, who served as President of the Security Council, was notified by letter dated March 1, 2008 of the *acting* Government’s intent to amend the Hawaiian complaint pursuant to the 2001 *Articles on Responsibility of States for International Wrongful Acts*. (Annex 36).

It is in this capacity, the *acting* Government files this Protest and Demand to bring to the attention of the United Nations General Assembly the prolonged and illegal occupation of the Hawaiian Kingdom.

**A. CONCERNING THE VIOLATION OF THE PRINCIPLE THAT A STATE
MAY NOT EXERCISE ITS AUTHORITY ON THE TERRITORY OF
ANOTHER STATE**

The Permanent Court of International Justice acknowledged, “the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention.”⁶⁷ By virtue of the 1893 *Lili‘uokalani assignment* of executive power, the President of the United States was temporarily

⁶⁴ Dumberry, 671-672.

⁶⁵ *Id.*, 671.

⁶⁶ *Id.*, 672.

⁶⁷ S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7), p. 19.

assigned, under threat of war, the authority to administer Hawaiian law until the government is restored in accordance with the *Agreement of restoration*. After the government has been restored and the executive power reassigned, the Queen, or her successor in office, would thereafter grant amnesty to the insurgents.

While Hawai'i was clearly not a participant in the hostilities of the Spanish-American War, the United States occupied the Hawaiian Islands for the purpose of waging the war against Spain on August 12, 1898, as well as to fortify the islands as a military outpost for the defense of the United States in future conflicts.

The “power exercising effective control within another’s sovereign territory has only temporary managerial powers,” and during “that limited period, the occupant administers the territory on behalf of the sovereign.”⁶⁸ The actions taken by the McKinley administration, with the consent of the Congress by joint resolution, clearly intended to mask the violation of international law as if the annexation took place by treaty. As Marek states, “a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State.”⁶⁹

Article 6, Lieber Code (1863), regulated U.S. troops during the occupation of the Hawaiian Islands in 1898 and mandated the Commander of U.S. troops to administer the laws of the occupied country, being the civil and penal laws of the Hawaiian Kingdom. Article 6 was superseded by Article 43, 1899 Hague Convention, II (32 U.S. Stat. 1803), and then superseded by Article 43, 1907 Hague Convention, IV (Annex 37). Article 43 of the 1907 Hague Convention, IV, reinforces the 1893 *Lili'uokalani assignment* that mandates the President to provisionally administer the civil and penal laws of the Hawaiian Kingdom. On August 12, 1949, the United States signed and ratified the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV, of 12 August 1949 (Annex 38). In July 1956, the U.S. Department of the Army published Field Manual 27-10—The Law of Land Warfare.

Article 43 of the 1907 Hague Regulations, delimits the power of the occupant and serves as a fundamental bar on its free agency within an occupied neutral State.⁷⁰ Although the United States signed and ratified both Hague Regulations, which post-date the occupation of the Hawaiian Islands, the “text of Article 43,” according to Professor Benvenisti, “was accepted by scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary international law.”⁷¹ Professor Graber also states “nothing distinguishes the writing of the period

⁶⁸ Benvenisti, 6.

⁶⁹ Marek, 110.

⁷⁰ The United States signed the 1899 Hague Regulations respecting Laws and Customs of War on Land at The Hague on July 29, 1899 and ratified by the Senate March 14, 1902; see 32(1) U.S. Stat. 1803. The 1907 Hague Regulations respecting Laws and Customs of War on Land was signed at The Hague October 18, 1907 and ratified by the Senate March 10th 1908; see 36 U.S. Stat. 2277. The United States also signed the 1907 Hague Regulations respecting the Rights and Duties of Neutral Powers at The Hague on October 18, 1907 and ratified by the Senate on March 10th 1908; see 36 U.S. Stat. 2310.

⁷¹ Benvenisti, 8.

following the 1899 Hague code from the writing prior to that code.⁷² Consistent with this understanding of the international law of occupation during the Spanish-American war, Professor Smith reported that the “military governments established in the territories occupied by the armies of the United States were instructed to apply, as far as possible, the local laws and to utilize, as far as seemed wise, the services of the local Spanish officials.”⁷³ This instruction to U.S. troops during the Spanish-American war to apply the local laws of the occupied State was made pursuant to Article 6 of the Lieber Code.

With specific regard to occupying neutral territory, the Arbitral Tribunal, in *Coenca Brothers vs. Germany* (1927), concluded “the occupation of Salonika by the Allies in the autumn of 1915 constituted a violation of Greek neutrality.”⁷⁴ Later, in the *Chevreau* case (1931), the Arbitrator concluded that the status of the British forces while occupying Persia (Iran)—a neutral State in the First World War—was analogous to “belligerent forces occupying enemy territory.”⁷⁵ Professor Oppenheim observes that an occupant State on neutral territory “does not possess such a wide range of rights with regard to the occupied country and its inhabitants as he possesses in occupied enemy territory.”⁷⁶ Although the Hague Regulations apply only to territory belonging to an enemy, Professor Feilchenfeld states, “it is, nevertheless, usually held that the rules on belligerent occupation will also apply where a belligerent, in the course of the war, occupies neutral territory, even if the neutral power should have failed to protest against the occupation.”⁷⁷ While Hawai’i was a neutral state at the time of its occupation during the Spanish American war, the law of occupation ought to be not only applied with equal force and effect, but that the occupier would be shorn of its belligerent rights in Hawaiian territory as a result of Hawai’i’s neutrality and the obligations incurred under the 1893 *Lili‘uokalani assignment* and the *Agreement of restoration*.

B. CONCERNING THE VIOLATIONS OF TREATIES AND INTERNATIONAL LAW

The Hawaiian Kingdom is a member State of the Universal Postal Union since January 1, 1882, has forty-six (46) State treaty partners, and, to a limited degree, one hundred twenty-seven (127) successor State quasi-treaty partners. In this Protest and Demand, the Hawaiian Kingdom’s identification of successor States collectively includes former colonial, mandate or trust territories. This identification is made without any prejudice to the particular rights of each successor States in relation to the mode of exercising self-determination when they achieved their independence.

⁷² Doris Graber, *The Development of the Law of Belligerent Occupation: 1863-1914*, (Columbia University Press 1949), 143.

⁷³ Munroe Smith, “Record of Political Events,” 13(4) *Political Science Quarterly* 748 (Dec. 1898).

⁷⁴ *Coenca Brothers v. Germany*, (Greco-German Mixed Arbitral Tribunal, December 1st 1927, case no. 389). Annual Digest of Public International Law Cases, 1927 & 1928, (Longmans, Green and Co., 1931), 571.

⁷⁵ “*Chevreau case* (In the Matter of the Claim Madame Chevreau Against the United Kingdom),” 27 *American Journal of International Law* 160 (1933).

⁷⁶ Lassa Oppenheim, *International Law*, 7th ed., (David McKay Co. 1948-52), 241.

⁷⁷ Ernst Feilchenfeld, *The International Economic Law of Belligerent Occupation* (Carnegie Endowment for International Peace 1942), 8.

According to Professor Oppenheim, “there is room for the view that in case of separation resulting in the emergence of a new State the latter is bound by—or at least entitled to accede to—general treaties of a ‘law-making’ nature, especially those of a humanitarian character.”⁷⁸ Beato explains, “contrary to conventional law’s clean slate doctrine, relatively few newly independent states renounce all of their predecessor state’s treaties. Instead, new states tend to adopt a pragmatic approach which balances issues of self-determination and sovereignty in foreign affairs against the need to foster stability in international relations.”⁷⁹ Professor Hershey states that it “is generally agreed that the purely local or personal rights and obligations of the [predecessor State]...remain with the [successor State].”⁸⁰ Treaty obligations to private individuals survive the succession and bind the successor State.⁸¹

Provisions of these treaties not only protect the private rights and obligations of the citizenry of the predecessor States and their successor States while within the territory of the Hawaiian Kingdom, but also protect the private rights and obligations of the citizenry of the Hawaiian Kingdom while within the territories of the predecessor States and their successor States. This rule stems from the principle of international law that change in sovereignty does not affect the private rights of individuals.

Currently, forty-six (46) member States stand in violation of treaties with the Hawaiian Kingdom and international law, and one hundred twenty-seven (127) successor States stand in violation, to a lesser degree, to certain provisions of their predecessor States’ treaties that are private in nature and not public.

1. Austria/Hungary—Treaty of Friendship, Commerce and Navigation

On June 18, 1875, a Treaty was signed between Austria-Hungary and the Hawaiian Kingdom in London and thereafter ratified by both governments (Annex 39). Article IV of this treaty provides:

“the Citizens of each high contracting Parties when resident in the territory of the other shall enjoy the most constant and complete protection for their persons and property, and for this purpose they shall have free and easy access to the Courts of Justice, provided by law, in pursuit and defense of their rights. They shall be at liberty to employ lawyers, advocates or Agents to prosecute or defend their rights before such Courts of Justice. In fact they shall enjoy in

⁷⁸ See Oppenheim, *International Law* (1955), vol. 1, p. 167. See also Fenwick, *International Law*, p. 153.

⁷⁹ Andrew M. Beato, “Newly Independent and Separating States’ Succession to Treaties,” 9(2) *American University Journal of International Law & Policy* (1994): 525-558, 544.

⁸⁰ Amos. S. Hershey, “The Succession of States,” 5(2) *American Journal of International Law* 285-297, 289 (Apr., 1911).

⁸¹ Thos. Baty, “Division of States: Its Effect on Obligations,” *Transactions of the Grotius Society, Vol. 9, Problems of Peace and War, Papers Read before the Society in the year 1923* (1923), 119-129, 125.

this respect all the rights and privileges which are granted to natives, and shall be subject to the same conditions.”

Following the dismemberment of Austria-Hungary into two separate States of Austria and Hungary following the first World War, Hungary also became a State party with Austria to the 1875 Treaty with the Hawaiian Kingdom.

Neither Austria nor Hungary nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XIX of the 1875 Treaty. Therefore this treaty is still in full force, continues to have legal effect to date. Former Austro-Hungarian territories, which acquired their independence from Austria-Hungary, are successor States to, at the very least, Article IV of the Hawaiian-Austro/Hungarian Treaty. Former Austro-Hungarian territories are:

- a. Czech Republic. Independence: October 28, 1918.
- b. Poland. Independence: November 11, 1918.
- c. Slovakia. Independence: Independence: October 28, 1918.

2. Belgium—Treaty of Amity, Commerce and Navigation

On October 4, 1862, a Treaty was signed between Belgium and the Hawaiian Kingdom in Brussels and thereafter ratified by both governments (Annex 40). Article IV of this treaty provides:

“the respective citizens of the two countries shall enjoy the most constant and complete protection for their persons and property. Consequently they shall have free and easy access to the court of justice in the pursuit and defense of their rights in every instance and degree of jurisdiction established by the laws.”

Neither Belgium nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVII of the 1862 Treaty. Therefore this treaty is still in full force and continues to have legal effect to date. Former Belgian territories, which acquired their independence from Belgium, are successor States to, at the very least, Article IV of the Hawaiian-Belgian Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former Belgian territories are:

- a. Democratic Republic of the Congo. Independence: June 30, 1960.
- b. Burundi. Independence from Belgian Trusteeship on July 1, 1962
- c. Rwanda. Independence from Belgian Trusteeship on July 1, 1962

3. Denmark—Treaty of Friendship, Commerce and Navigation

On October 19, 1846, a Treaty was signed between Denmark and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments (Annex 41). Article II of this treaty provides:

“the subjects of His Majesty the King of Denmark, residing within the dominions of the King of the Hawaiian Islands, shall enjoy the same protection in regard to their civil rights as well as to their persons and properties, as native subjects; and the King of the Hawaiian Islands engages to grant to Danish subjects the same rights and privileges which now are, or may hereafter be, granted to or enjoyed by any other foreigners, subjects of the most favored nation.”

Neither Denmark nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore, this treaty is still in full force and continues to have legal effect to date. Former Danish territories, which acquired their independence from Denmark, are successor States to, at the very least, Article II of the Hawaiian-Danish Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. A former Danish territory is:

- a. Iceland. Independence: June 7, 1944.

4. France—Treaty of Friendship, Commerce and Navigation

On October 29, 1857, a third Treaty was signed between France and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments (Annex 42). Article IV of this treaty provides:

“their respective subjects shall enjoy, in both States, a constant and complete protection for their persons and properties. They shall, consequently, have free and easy access to the tribunals of justice, in prosecution and defense of their rights, in every instance, and in all the degrees of jurisdiction established by the laws.”

Neither France nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVI of the 1857 Treaty. Therefore this treaty is still in full force and continues to have legal effect to date. Former French territories, which acquired their independence from France, are successor States to, at the very least, Article IV of the Hawaiian-French Treaty with regard to the citizenry

of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former French territories, which includes mandate territories, are:

- a. Algeria. Independence: July 5, 1962.
- b. Benin. Independence: August 1, 1960.
- c. Burkina Faso. Independence: August 5, 1960.
- d. Central African Republic. Independence: August 13, 1960.
- e. Chad. Independence: August 11, 1960.
- f. Comoros. Independence: July 6, 1975.
- g. Congo. Independence: August 15, 1960.
- h. Côte D'Ivoire. Independence: August 7, 1960.
- i. Djibouti. Independence: June 27, 1977.
- j. Gabon. Independence: August 17, 1960.
- k. Guinea. Independence: October 2, 1958.
- l. Lao People's Democratic Republic. Independence: July 19, 1949.
- m. Lebanon. Independence from French Mandate: November 22, 1943.
- n. Madagascar. Independence: June 26, 1960.
- o. Mali. Independence: September 22, 1960.
- p. Mauritania. Independence: November 28, 1960.
- q. Morocco. Independence: March 2, 1956.
- r. Niger. Independence: August 3, 1960.
- s. Republic of Cameroon. Independence from French Trusteeship on January 1, 1960.
- t. Senegal. Independence: April 4, 1960.
- u. Syria. Independence from French Mandate: April 17, 1946.
- v. Togo. Independence from French Trusteeship on April 27, 1960.
- w. Tunisia. Independence: March 20, 1956.
- x. Vanuatu. Independence from France and Great Britain: July 30, 1980.
- y. Viet Nam. Independence: September 2, 1945.

5. Germany—Treaty of Friendship, Commerce and Navigation and Consular Convention

On March 25, 1879, a Treaty was signed between Germany and the Hawaiian Kingdom in Berlin and thereafter ratified by both governments and exchanged (Annex 43). Article II of this treaty provides:

“the subjects and citizens of the two High Contracting Parties may remain and reside in any part of said territories respectively and shall receive and enjoy full and perfect

protection for their persons and property. They shall have free and easy access to the courts of justice, provided by law, in pursuit and defense of their rights, and they shall be at liberty to choose and employ lawyers, advocates or agents to pursue or defend their rights before such courts of justice; and they shall enjoy in this respect all the rights and privileges as native subjects or citizens.”

Neither Germany nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVI of the 1879 Treaty. Therefore, this treaty is still in full force and continues to have legal effect to date.

**6. *United Kingdom of Great Britain and Northern Island—
Treaty of Friendship, Commerce and Navigation***

On July 10, 1851, a Treaty was signed between the United Kingdom and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments (Annex 44). Article VIII of this treaty provides:

“the subjects of either of the contracting parties, in the territories of the other, shall receive and enjoy full and perfect protection for their persons and property, and shall have free and open access to the courts of justice in the said countries, respectively, for the prosecution and defense of their just rights...”

Neither Great Britain nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore, this treaty is still in full force and continues to have legal effect to date. Former British territories, which acquired their independence from Great Britain, are successor States to, at the very least, Article VIII of the Hawaiian-British Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former British territories, which includes mandate territories, are:

- a. Afghanistan. Independence: August 19, 1919.
- b. Antigua and Barbuda. Independence: November 1, 1981.
- c. Australia. Independence: January 1, 1901.
- d. Bahamas. Independence: July 10, 1973.
- e. Bahrain. Independence: August 15, 1971.
- f. Bangladesh. Independence from Pakistan on December 16, 1971. Pakistan acquired Independence from Great Britain on August 14, 1947.
- g. Barbados. Independence: November 30, 1966.

- h. Belize. Independence: September 21, 1981.
- i. Bhutan. Independence from India on August 8, 1949. India acquired Independence from Great Britain on August 15, 1947.
- j. Botswana. Independence: September 30, 1966.
- k. Brunei Darussalam. Independence: January 1, 1984.
- l. Cyprus. Independence: August 16, 1960.
- m. Dominica. Independence: November 3, 1978.
- n. Egypt. Independence: February 28, 1922.
- o. Fiji. Independence: October 10, 1970.
- p. Gambia. Independence: February 18, 1965.
- q. Ghana. Independence: March 6, 1957.
- r. Grenada. Independence: February 7, 1974.
- s. Guyana. Independence: May 26, 1966.
- t. India. Independence: August 15, 1947.
- u. Iraq. Independence from British Mandate: October 3, 1932.
- v. Ireland. Independence: December 6, 1921.
- w. Israel. Independence from British Mandate: May 14, 1948.
- x. Jamaica. Independence: August 6, 1962.
- y. Jordan. Independence from British Mandate: May 25, 1946.
- z. Kenya. Independence: December 12, 1963.
- aa. Kiribati. Independence: July 12, 1979.
- bb. Kuwait. Independence: June 19, 1961.
- cc. Lesotho. Independence: October 4, 1966.
- dd. Malawi. Independence: July 6, 1964.
- ee. Malaysia. Independence: August 31, 1957.
- ff. Maldives. Independence: July 26, 1965.
- gg. Malta. Independence: September 21, 1964.
- hh. Mauritius. Independence: March 12, 1968.
- ii. Myanmar. Independence: January 4, 1948.
- jj. Namibia. Independence from South African Mandate on March 21, 1990. South Africa acquired Independence from Great Britain on May 31, 1910.
- kk. Nauru. Independence from Australia, New Zealand and Great Britain Trusteeship on January 31, 1968. New Zealand acquired Independence from Great Britain on September 26, 1907, and Australia acquired Independence from Great Britain on January 1, 1901.
- ll. New Zealand. Independence: September 26, 1907.

- mm. Nigeria. Independence: October 1, 1960.
- nn. Pakistan. Independence: August 14, 1947.
- oo. Papua New Guinea. Independence from Australian Trusteeship on September 16, 1975. Australia acquired Independence from Great Britain on January 1, 1901.
- pp. Qatar. Independence: September 3, 1971.
- qq. Saint Kitts and Nevis. Independence: September 19, 1983.
- rr. Saint Lucia. Independence: February 22, 1979.
- ss. Saint Vincent and the Grenadines. Independence: October 27, 1979.
- tt. Samoa. Independence from New Zealand Trusteeship on January 1, 1962. New Zealand acquired Independence from Great Britain on September 26, 1907.
- uu. Seychelles. Independence: June 29, 1976.
- vv. Sierra Leone. Independence: April 27, 1961.
- ww. Singapore. Independence from Malaysia on August 9, 1965. Malaysia acquired Independence from Great Britain on August 31, 1957.
- xx. Solomon Islands. Independence: July 7, 1978.
- yy. Somalia. Independence: June 26, 1960.
- zz. South Africa. Independence: May 31, 1910.
- aaa. South Sudan. Independence from Sudan on July 9, 2011. Sudan acquired Independence from Great Britain on January 1, 1956.
- bbb. Sri Lanka. Independence: February 4, 1948.
- ccc. Sudan. Independence: January 1, 1956.
- ddd. Swaziland. Independence: September 6, 1968.
- eee. Tonga. Independence: June 4, 1970.
- fff. Trinidad and Tobago. Independence: August 31, 1962.
- ggg. Tuvalu. Independence: October 1, 1978.
- hhh. Uganda. Independence: October 9, 1962.
- iii. United Arab Emirates. Independence: December 2, 1971.
- jjj. United Republic of Tanzania. Tanganyika became independent on December 9, 1961 from British Trusteeship; Zanzibar became independent on December 19, 1963; Tanganyika united with Zanzibar on April 26, 1964 to form the United Republic of Tanganyika and Zanzibar; renamed United Republic of Tanzania.

- kkk. Vanuatu. Independence from both France and Great Britain on July 30, 1980.
- lll. Zambia. Independence: October 24, 1964.
- mmm. Zimbabwe. Independence: April 18, 1980.

7. Italy—Treaty of Amity, Commerce and Navigation

On July 22, 1863, a Treaty was signed between Italy and the Hawaiian Kingdom in Paris and thereafter ratified by both governments (Annex 45). Article IV of this treaty provides:

“the respective citizens of the two countries shall enjoy the most constant and complete protection for their persons and property. Consequently, they shall have free and easy access to the courts of justice in the pursuit and defense of their rights, in every instance and degree of jurisdiction established by the laws.”

Neither Italy nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVII of the 1863 Treaty. Therefore, this treaty is still in full force and continues to have legal effect to date. Former Italian territories, which acquired their independence from Italy, are successor States to, at the very least, Article IV of the Hawaiian-Italian Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former Italian territory is:

- a. Libya. Independence: December 24, 1951.

8. Japan—Treaty of Amity and Commerce

On August 19, 1871, a Treaty was signed between Japan and the Hawaiian Kingdom in the city of Yedo and thereafter ratified by both governments (Annex 46). Article II of this treaty provides:

“the subjects of each of the two high contracting parties, respectively, shall have the liberty freely and securely to come with their ships and cargoes to all places, ports and rivers in the territories of the other, where trade with other nations is permitted; they may remain and reside in any such ports, and places respectively, and hire and occupy houses and warehouses, and may trade in all kinds of produce, manufactures and merchandise of lawful commerce, enjoying at all times the same privileges as may have been, or may hereafter be granted to the citizens or subjects of any other nation, paying at all times such duties and taxes as may be exacted from the citizens or subjects of

other nations doing business or residing within the territories of each of the high contracting parties.”

Neither Japan nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article VI of the 1871 Treaty. Therefore, this treaty is still in full force and continues to have legal effect to date. Former Japanese territories, which acquired their independence from Japan, are successor States to, at the very least, Article II of the Hawaiian-Japanese Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former Japanese territories are:

- d. North Korea. Independence: August 15, 1945.
- e. South Korea. Independence: August 15, 1945.

9. Netherlands—Treaty of Friendship, Commerce and Navigation

On October 16, 1862, a Treaty was signed between the Netherlands and the Hawaiian Kingdom in The Hague and thereafter ratified by both governments (Annex 47). Article II of this treaty provides:

“the respective subjects of the two high contracting parties shall be perfectly and in all respects assimilated on their establishment and settlement, whether for a longer or shorter time in the States and Colonies of the other party on the terms granted to the subjects of the most favored nation in all which concerns the permission of sojourning, the exercise of legal professions, imposts, taxes, in a word, all the conditions relative to sojourn and establishment.”

Neither the Netherlands nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article VI of the 1862 Treaty. Therefore, this treaty is still in full force and continues to have legal effect to date. Former Dutch territories, which acquired their independence from the Netherlands, are successor States to, at the very least, Article II of the Hawaiian-Dutch Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former Dutch territories are:

- a. Indonesia. Independence: August 17, 1945.
- b. Suriname. Independence: November 25, 1975.

10. Portugal—Treaty of Friendship and Commerce

On May 5, 1882, a Provisional Convention was signed between Portugal and the Hawaiian Kingdom in Lisbon and thereafter ratified by both governments (Annex 48). Article I of this convention provides:

“the Consular Agents, the subjects, the ships and products of the soil, or of the industry of one of the two countries, will enjoy on the territory of the other the same exemptions, privileges, and immunities which other Consular Agents, subjects, ships and products of the soil, or of the industry of the most favored nation, enjoy.”

Neither Portugal nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this Provisional Convention in accordance with the principles of customary international law. Therefore, this Portuguese Provisional Convention is still in full force and continues to have legal effect to date. Former Portuguese territories, which acquired their independence from Portugal, are successor States to, at the very least, Article I of the Hawaiian-Portuguese Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former Portuguese territories are:

- a. Angola. Independence: November 11, 1975.
- b. Cape Verde. Independence: July 5, 1975.
- c. Guinea-Bissau. Independence: September 24, 1973.
- d. Mozambique. Independence: June 25, 1975.
- e. Sao Tome and Principe. Independence: July 12, 1975.
- f. Timor-Leste. Independence: November 28, 1975. May 20, 2002 is the official date of international recognition of Timor-Leste’s independence from Indonesia.

11. Russia—Treaty of Commerce and Navigation

On June 19, 1869, a Treaty was signed between Russia and the Hawaiian Kingdom in Paris and thereafter ratified by both governments (Annex 49). Article II of this treaty provides:

“the subjects of His Majesty the Emperor of all the Russias, and the subjects of His Majesty the King of the Hawaiian Islands, shall be treated reciprocally on the footing of the most favored nation.”

Neither Russia nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore, this treaty is still in full force and continues to have legal effect to date. Former Russian territories, which acquired their independence from Russia, are successor States to, at the very least, Article II of the Hawaiian-Russian Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former Russian territories are:

- a. Armenia. Independence: September 23, 1991.
- b. Azerbaijan. Independence: August 30, 1991.
- c. Belarus. Independence: August 25, 1991.
- d. Finland. Independence: December 6, 1917.
- e. Georgia. Independence: April 9, 1991.
- f. Kazakhstan. Independence: December 6, 1991.
- g. Kyrgyzstan. Independence: August 31, 1991.
- h. Latvia. Independence: August 21, 1991.
- i. Lithuania. Independence: March 11, 1990.
- j. Republic of Moldova. Independence: August 27, 1991.
- k. Tajikistan. Independence: September 9, 1991.
- l. Turkmenistan. Independence: October 27, 1991.
- m. Ukraine. Independence: August 24, 1991.
- n. Uzbekistan. Independence: August 31, 1991.

12. Spain—Treaty of Peace and Friendship

On October 29, 1863, a Treaty was signed between Spain and the Hawaiian Kingdom in London and thereafter ratified by both governments (Annex 50). Article IV of this treaty provides:

“the respective citizens of the two countries shall enjoy the most constant and complete protection for their persons and property. Consequently, they shall have free and easy access to the courts of justice in the pursuit and defense of their rights, in every instance and degree of jurisdiction established by the laws.”

Neither Spain nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVII of the 1863 Treaty. Therefore, this treaty is still in full force and continues to have legal effect to date day. Former Spanish territories, which acquired their independence from Spain, are successor States to, at the very least, Article IV of the Hawaiian-Spanish Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former Spanish territories are:

- a. Cuba. Independence: May 20, 1902.
- b. Equatorial Guinea. Independence: October 12, 1968.

13. Switzerland—Treaty of Friendship, Establishment and Commerce

On July 20, 1864, a Treaty was signed between the Swiss Confederation and the Hawaiian Kingdom in Berne and thereafter ratified by both governments (Annex 51). Article III of the treaty provides:

“the citizens of each of the contracting parties shall enjoy on the territory of the other the most perfect and complete protection for their persons and their property. They shall in consequence have free and easy access to the tribunals of justice for their claims and the defense of their rights, in all cases and in every degree of jurisdiction established by the law.”

Neither the Swiss Confederation nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XIII of the 1864 Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Therefore, this treaty is still in full force and continues to have legal effect to date.

14. Sweden and Norway—Treaty of Friendship, Commerce and Navigation

On July 1, 1852, a Treaty was signed between Sweden and Norway and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments (Annex 52). Article II of the treaty provides:

“there shall be between all the dominions of His Swedish and Norwegian Majesty, and the Hawaiian Islands, a reciprocal freedom of commerce. The subjects of each of the two contracting parties, respectively, shall have liberty freely and securely to come with their ships and cargoes to all places, ports and rivers in the territories of the other, where trade with other nations is permitted. They may remain and reside in any part of the said territories, respectively, and hire and occupy houses and warehouses and my trade, by wholesale or retail, in all kinds of produce, manufactures or merchandise of lawful commerce, enjoying the same exemptions and privileges as native subjects, and subject always to the same laws and established customs as native subjects.”

Following the separation of Austria-Hungary into two separate States, both States remained parties to the 1852 Treaty with the Hawaiian Kingdom. Neither Norway nor Sweden nor the Hawaiian Kingdom gave notice to the other of their intentions to

terminate this treaty in accordance with the terms of Article XVII of the 1852 Treaty. Therefore, the treaty is still in full force and continues to have legal effect to date.

***15. United States of America—Treaty of Friendship,
Commerce and Navigation***

On December 20, 1849, the Treaty between the United States of America and the Hawaiian Kingdom was concluded and signed in Washington, D.C. Ratifications by both countries were exchanged in Honolulu on the Island of O’ahu, on August 24, 1850. (Annex 6). Article VIII of the treaty provides:

“...each of the two contracting parties engages that the citizens or subjects of the other residing in their respective States shall enjoy their property and personal security in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries, respectively.”

In addition, Article XVI of the said treaty provides that any:

“...citizen or subject of either party infringing the articles of this treaty shall be held responsible for the same, and the harmony and good correspondence between the two governments shall not be interrupted thereby, each party engaging in no way to protect the offender, or sanction such violation.”

Neither the United States nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XVI of the 1849 Treaty. Therefore, this treaty is still in full force and continues to have legal effect to date. Former United States territories, which acquired their independence from the United States, are successor States to, at the very least, Article VIII of the Hawaiian-American Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former United States territories are:

- a. Federated States of Micronesia. Independence from American trusteeship on November 3, 1986.
- b. Marshall Islands. Independence from American trusteeship on October 21, 1986.
- c. Palau. Independence from American trusteeship on October 1, 1994.
- d. Philippines. Independence: July 4, 1946.

***16. United States of America—1907 Hague Convention, IV,
respecting Laws and Customs of War on Land***

The United States of America signed at The Hague Convention, IV, on October 18, 1907 and ratified by the Senate March 10, 1908 (Annex 37). This treaty is still in full force and continues to have legal effect to date and binds the United States of America to administer the laws of the Hawaiian Kingdom. Article 43 of the treaty provides:

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”

Article 55 of the treaty also provides:

“The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.”

***17. United States of America—1907 Hague Convention, V,
respecting the Rights and Duties of Neutral Powers***

The United States of America also signed the 1907 Hague Regulations respecting the Rights and Duties of Neutral Powers at The Hague on October 18, 1907 and ratified by the Senate on March 10, 1908. (Annex 53). This treaty is still in full force and continues to have legal effect to date and binds the United States of America to respect the neutrality of the Hawaiian Kingdom. Article 1 of the treaty provides:

“The territory of neutral Powers is inviolable.”

Article 2 of the treaty provides:

“Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.”

Article 3 of the treaty provides:

“Belligerents are likewise forbidden to: (a) Erect on the territory of a neutral Power a wireless telegraphy station or other apparatus for the purpose of communicating with

belligerent forces on land or sea; (b) Use any installation of this kind established by them before the war on the territory of a neutral Power for purely military purposes, and which has not been opened for the service of public messages.”

Article 4 of the treaty provides:

“Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral Power to assist the belligerents.”

18. Foreign Consulates Unlawfully Established within the territory of the Hawaiian Kingdom

The United States of America has accredited thirty-four (34) foreign Consulates that are unlawfully maintained within the territory of the Hawaiian Kingdom in violation of international law and Hawaiian law, to wit:

- | | |
|---|---|
| (1) CONSULATE OF AUSTRALIA
Consul General Scott Dewar
1000 Bishop Street, P.H.
Honolulu, Hawai‘i 96813-4299 | (2) CONSULATE OF BELGIUM
Honorary Consul Jeffrey Lau
707 Richards Street, Suite 600
Honolulu, Hawai‘i 96813-4693 |
| (3) CONSULATE OF BRAZIL
Honorary Consul Eric Crispin
745 Fort Street Mall, Suite 1450
Honolulu, Hawai‘i 96813 | (4) CONSULATE OF CHILE
Honorary Consul Gladys Vernoy
2240 Kuhio Avenue, P.H. 3804
Honolulu, Hawai‘i 96815-2820 |
| (5) CONSULATE OF CZECH REPUBLIC
Honorary Consul Ann Ching
591 Paikau Street
Honolulu, Hawaii 96816 | (6) CONSULATE OF DENMARK
Honorary Consul Claus Hansen
1150 Kikowaena St.
Honolulu, Hawai‘i 96819-2227 |
| (7) CONSULATE OF FINLAND
Honorary Consul Katja Silveraa
411 Hobron Lane, Suite 808
Honolulu, Hawai‘i 96815 | (8) CONSULATE OF FRANCE
Honorary Consul Patricia Lee
P.O. Box 22009
Honolulu, Hawaii 96823 |
| (9) CONSULATE OF HUNGARY
Honorary Consul
Katalin Csiszar, Ph.D.
1960 East-West Road, Suite T415
Honolulu, Hawai‘i 96822 | (10) CONSULATE OF INDIA
Honorary Consul Sheila Watumull
P.O. Box 10905
Honolulu, Hawai‘i 96816 |
| (11) CONSULATE OF ITALY
Honorary Consul Michele | (12) CONSULATE OF JAPAN
Consul General Yoshihiko Kamo |

- Carbone, M.D., Ph.D.
735 Bishop Street, Suite 201
Honolulu, Hawai‘i 96813
- 1742 Nuuanu Avenue
Honolulu, Hawai‘i 96817-3201
- (13) CONSULATE OF KIRIBATI
Honorary Consul William Paupe
95 Nakolo Place
Honolulu, Hawai‘i 96819-1845
- (14) CONSULATE OF SOUTH KOREA
Consul General Young Kil Suh
2756 Pali Highway
Honolulu, Hawai‘i 96817-1491
- (15) CONSULATE OF LUXEMBOURG
Honorary Consul
Jean-Claude Drui
2176 Lauwiliwili Street, #101
Kapolei, Hawai‘i 96707
- (16) CONSULATE OF MARSHALL ISLANDS
Consul General Noda Lojkar
1888 Lusitana Street, Suite 301
Honolulu, Hawai‘i 96813-1518
- (17) CONSULATE OF MEXICO
Honorary Consul Andrew Kluger
818 South King Street, #2100
Honolulu, Hawai‘i 96813
- (18) CONSULATE OF MICRONESIA
Consul General Akillino Susaia
3049 Ualena Street, Suite 910
Honolulu, Hawai‘i 96819-1999
- (19) CONSULATE OF MOROCCO
Honorary Consul M. Jan Rum
1419 Sixteenth Avenue
Honolulu, Hawai‘i 96816
- (20) CONSULATE OF THE NETHERLANDS
Honorary Consul Gaylord Tom
745 Fort St. Mall, Suite 702
Honolulu, Hawai‘i 96813-3814
- (21) CONSULATE OF NEW ZEALAND
Honorary Consul Peter Lewis
3929 Old Pali Road
Honolulu, Hawai‘i 96817
- (22) CONSULATE OF NORWAY
Honorary Consul Nina Fasi
949 Wainiha Street
Honolulu Hawai‘i 96825
- (23) CONSULATE OF PERU
Honorary Consul Carlos
Juarez, Ph.D.
1188 Fort Street Mall Suite 305
Honolulu, Hawai‘i 96813-2471
- (24) CONSULATE OF THE PHILIPPINES
Consul General Julius Torres
2433 Pali Highway
Honolulu, Hawai‘i 96817-1452
- (25) CONSULATE OF POLAND
Honorary Consul Bozena Jarnot
2825 South King Street, Suite 2701
Honolulu, Hawai‘i 96826-3535
- (26) CONSULATE OF PORTUGAL
Honorary Consul John Felix, Ph.D.
P.O. Box 240778
Honolulu, Hawai‘i 96824
- (27) CONSULATE OF SAN MARINO
Honorary Consul Yukio Takahashi
4615 Kahala Avenue
Honolulu, Hawai‘i 96816-5210
- (28) CONSULATE OF SLOVENIA
Admiral R.J. Zlatoper, USN (RET)
900 Fort Street Mall, Suite 920
Honolulu, Hawai‘i 96813

- | | |
|--|---|
| <p>(29) CONSULATE OF SPAIN
 Honorary Vice Consul
 John Felix, Ph.D.
 P.O. Box 240778
 Honolulu, Hawai‘i 96824</p> | <p>(30) CONSULATE OF SRI LANKA
 Honorary Consul Kusuma Cooray
 60 North Beretania Street, Suite 410
 Honolulu, Hawai‘i 96817-4754</p> |
| <p>(31) CONSULATE OF SWEDEN
 Honorary Consul James M. Cribley
 737 Bishop Street, Suite 2600
 Honolulu, Hawai‘i 96813-3283</p> | <p>(32) CONSULATE OF SWITZERLAND
 Honorary Consul Theres Ryf Desai
 616 Kahiau Loop
 Honolulu, Hawai‘i 96821-2450</p> |
| <p>(33) CONSULATE OF THAILAND
 Honorary Consul Colin Miyabara
 866 Iwilei Road, Suite 201
 Honolulu, Hawai‘i 96817</p> | <p>(34) CONSULATE OF TONGA
 Honorary Consul Annie Kaneshiro
 738 Kaheka Street, Suite 306B
 Honolulu, Hawai‘i 96814-3726</p> |

The *Lili‘uokalani assignment* did not authorize the U.S. Department of State to accredit foreign Consulates within the territory of the Hawaiian Kingdom. Foreign Consulates can only be accredited in the Hawaiian Islands by exequatur under Hawaiian Kingdom law pursuant to §458, Article X, Chapter VIII, Title 2, Compiled Laws of the Hawaiian Kingdom (Annex 5), which the *Lili‘uokalani assignment* calls for the faithful execution by the United States of America.

19. Universal Postal Union—Treaty of Berne

On January 1, 1882, the Hawaiian Kingdom joined the Universal Postal Union as a member State and acceded to the 1874 Treaty of Berne establishing the General Postal Union, which came to be known as the Universal Postal Union. The Hawaiian Kingdom was also a signatory to the *Additional Act to the Universal Postal Union Convention of June 1, 1878*, on March 21, 1885, (Annex 54) together with the other member States of the United Kingdom of Great Britain and Northern Ireland, Germany, United States of America, Argentina, Austria, Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, Columbia, Costa Rica, Denmark, Dominican Republic, Egypt, Ecuador, Spain, France, Canada, India, Greece, Guatemala, Haiti, Honduras, Italy, Japan, Liberia, Luxembourg, Mexico, Montenegro, Nicaragua, Paraguay, Netherlands, Peru, Persia (Iran), Portugal, Romania, Russia, El Salvador, Serbia, Sweden, Norway, Switzerland, Thailand, Turkey, Uruguay and Venezuela, was concluded and signed at Lisbon and thereafter ratified and exchanged by the governments.

The Hawaiian Kingdom has provided no notice of termination of its membership and maintains that it is still a member State of the Universal Postal Union. Therefore, the membership is still in full force and continues to have legal effect to date.

20. War Crimes Committed Against Civilian Population

Since April 6, 2012, protests and demands for the commission of war crimes by civilian judges of the State of Hawai‘i, being a political subdivision of the United States of America, against civilians who are invoking Hawaiian Kingdom law were sent to Admiral Locklear, Commander of the U.S. Pacific Command, pursuant to Section 495(b), Department of the Army Field Manual 27-10; Hague Convention No. IV, *Respecting the Laws and Customs of War on Land*, 18 October 1907; the Geneva Convention *Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949; and Title 18 U.S.C. §2441(c)(1) (Annex 55). These war crimes are continuing to date.

VI. ADMISSIBILITY OF THE PRESENT PROTEST AND DEMAND

It cannot be sufficiently stressed that conditions laid down under Article 35(2) of the Charter of the United Nations are satisfied.

The HAWAIIAN KINGDOM is a non-member State of the United Nations and the UNITED STATES OF AMERICA, AFGHANISTAN, ALGERIA, ANGOLA, ANTIGUA AND BARBUDA, ARGENTINA, ARMENIA, AUSTRALIA, AUSTRIA, AZERBAIJAN, BAHAMAS, BAHRAIN, BANGLADESH, BARBADOS, BELARUS, BELGIUM, BELIZE, BENIN, BHUTAN, BOLIVIA (PLURINATIONAL STATE OF), BOTSWANA, BRAZIL, BRUNEI DARUSSALAM, BULGARIA, BURKINA FASO, BURUNDI, CAPE VERDE, CENTRAL AFRICAN REPUBLIC, CHAD, CHILE, COLOMBIA, COMOROS, CONGO, COSTA RICA, COTE D'IVOIRE, CUBA, CYPRUS, CZECH REPUBLIC, DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, DEMOCRATIC REPUBLIC OF THE CONGO, DENMARK, DJIBOUTI, DOMINICA, DOMINICAN REPUBLIC, ECUADOR, EGYPT, EL SALVADOR, EQUATORIAL GUINEA, FIJI, FINLAND, FRANCE, GABON, GAMBIA, GEORGIA, GERMANY, GHANA, GREECE, GRENADA, GUATEMALA, GUINEA, GUINEA-BISSAU, GUYANA, HAITI, HONDURAS, HUNGARY, ICELAND, INDIA, INDONESIA, IRAN (ISLAMIC REPUBLIC OF), IRAQ, IRELAND, ITALY, JAMAICA, JAPAN, JORDAN, KAZAKHSTAN, KENYA, KIRIBATI, KUWAIT, KYRGYZSTAN, LAO PEOPLE'S DEMOCRATIC REPUBLIC, LATVIA, LEBANON, LESOTHO, LIBERIA, LIBYA, LITHUANIA, LUXEMBOURG, MADAGASCAR, MALAWI, MALAYSIA, MALDIVES, MALI, MALTA, MARSHALL ISLANDS, MAURITANIA, MAURITIUS, MEXICO, MICRONESIA (FEDERATED STATES OF), MONTENEGRO, MOROCCO, MOZAMBIQUE, MYANMAR, NAMIBIA, NAURU, NETHERLANDS, NEW ZEALAND, NICARAGUA, NIGER, NIGERIA, NORWAY, PAKISTAN, PALAU, PAPUA NEW GUINEA, PARAGUAY, PERU, PHILIPPINES, POLAND, PORTUGAL, QATAR, REPUBLIC OF CAMEROON, REPUBLIC OF KOREA, REPUBLIC OF MOLDOVA, ROMANIA, RUSSIAN FEDERATION, RWANDA, SAINT KITTS AND NEVIS, SAINT LUCIA, SAINT VINCENT AND THE GRENADINES, SAMOA, SAN MARINO, SAO TOME AND PRINCIPE, SENEGAL, SERBIA, SEYCHELLES, SIERRA LEONE, SINGAPORE, SLOVAKIA, SLOVENIA, SOLOMON ISLANDS, SOMALIA, SOUTH SUDAN, SOUTH AFRICA, SPAIN, SRI LANKA, SUDAN, SURINAME, SWAZILAND, SWEDEN, SWITZERLAND, SYRIAN ARAB REPUBLIC, TAJIKISTAN, THAILAND, TIMOR-LESTE, TOGO, TONGA, TRINIDAD AND TOBAGO, TUNISIA, TURKEY, TURKMENISTAN, TUVALU, UGANDA, UKRAINE, UNITED ARAB EMIRATES, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, UNITED REPUBLIC OF TANZANIA, URUGUAY, UZBEKISTAN,

VANUATU, VENEZUELA (BOLIVARIAN REPUBLIC OF), VIET NAM, ZAMBIA, and ZIMBABWE are member States of the United Nations.

The HAWAIIAN KINGDOM will withdraw States named in this Protest and Demand, with the exception of the United States of America, when said States shall declare, whether individually or collectively, that they will not recognize as lawful the United States of America's presence and authority within the territory, territorial seas, exclusive economic zone and airspace of the Hawaiian Kingdom according to Article 41(2), *Responsibility of States for International Wrongful Acts* (2001), except for the United States' temporary and limited authority vested by virtue of the 1893 *Lili'uokalani assignment*, Article 43 of the 1907 Hague Convention, IV, and international law.

The HAWAIIAN KINGDOM also reserves the right to present further grounds for its Protest and Demand giving fuller particulars, which it will deposit with the President of the United Nations General Assembly in due course.

A handwritten signature in black ink, appearing to read "David Keanu Sai". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping tail.

David Keanu Sai

ANNEXES

- Annex 1: Hawaiian Kingdom’s Acceptance of the Obligations of Pacific Settlement
- Annex 2: Anglo-French Proclamation Recognizing Hawaiian Independence (Nov. 28, 1843).
- Annex 3: United States Recognition of Hawaiian Independence (July 6, 1844)
- Annex 4: Hawaiian Constitution (1864)
- Annex 5: Chapter VIII—Department of Foreign Affairs, Compiled Laws of the Hawaiian Kingdom (1884)
- Annex 6: Hawaiian-United States Treaty of Friendship, Commerce and Navigation (December 20, 1849)
- Annex 7: Hawaiian-United States Treaty of Commercial Reciprocity (January 13, 1875)
- Annex 8: Hawaiian-United States Postal Convention Concerning Money Orders (September 11, 1883)
- Annex 9: Hawaiian-United States Supplementary Convention to the 1875 Treaty of Commercial Reciprocity (December 6, 1884)
- Annex 10: *Lili‘uokalani assignment* (January 17, 1893) through Exchange of Notes
- Annex 11: Treason—Penal Code of the Hawaiian Kingdom
- Annex 12: *Agreement of restoration* (December 18, 1893) through Exchange of Notes
- Annex 13: *New York Tribune* (January 14, 1894)
- Annex 14: *St. Paul Sunday Globe newspaper* (January 14, 1894)
- Annex 15: *The Princeton Union newspaper* (January 18, 1894)
- Annex 16: *Hawai‘i Holomua newspaper* (January 24, 1894)
- Annex 17: Diplomatic Protest by Queen Lili‘uokalani (June 17, 1897)
- Annex 18: Protests by the Hawaiian Patriotic League and the Hawaiian Political Association (July 24, 1897)

- Annex 19: Signature Petition 21,269 signatures Protesting Annexation by the Hawaiian Patriotic League (1897)
- Annex 20: United States Congress' *Joint Resolution to provide for annexing the Hawaiian Islands to the United States* (July 7, 1898)
- Annex 21: Transcripts of the Secret Session of the United States Senate regarding the occupation of the Hawaiian Islands, May 31, 1898.
- Annex 22: United States Congress' *An Act To provide a government for the Territory of Hawai'i* (April 30, 1900)
- Annex 23: United States Congress' *An Act To provide for the admission of the State of Hawai'i into the Union* (March 18, 1959)
- Annex 24: *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566 (2001)
- Annex 25: Hawaiian Legislature's *Act to Provide for the Registration of Co-partnership Firms*, 1880
- Annex 26: Deed of General Partnership for Perfect Title Company (December 10, 1995)
- Annex 27: Deed of General Partnership for the Hawaiian Kingdom Trust Company (December 15, 1995)
- Annex 28: Deeds of Trust to the Hawaiian Kingdom Trust Company
- Annex 29: Title 3—Legislative Department, Compiled Laws of the Hawaiian Kingdom (1884)
- Annex 30: Deed of Conveyance from David Keanu Sai to Donald Lewis (February 27, 1996)
- Annex 31: Deed of Conveyance from Donald Lewis to Nai'a Ulumaimalu (February 27, 1995)
- Annex 32: Notice of Appointment of *acting* Regent on March 1, 1996, by the Trustees of the Hawaiian Kingdom Trust Company (March 14, 1996)
- Annex 33: Deed of Conveyance from the Trustees of the Hawaiian Kingdom Trust Company to David Keanu Sai as *acting* Regent
- Annex 34: Newspaper printing of Proclamation of the Restoration of the Hawaiian Kingdom Government by the *acting* Regent on February 28, 1997 (March 9, 1997)

- Annex 35: Privy Council Resolution establishing an acting Council of Regency to replace the acting Regent (September 10, 1999)
- Annex 36: *Acting Government Letter to Russian Ambassador Vitaly Churkin, President of the Security Council (March 1, 2008).*
- Annex 37: *1907 Hague Convention, IV, respecting Laws and Customs of War on Land*
- Annex 38: *1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV*
- Annex 39: *Austria/Hungary—Treaty of Friendship, Commerce and Navigation (June 18, 1875)*
- Annex 40: *Belgium—Treaty of Amity, Commerce and Navigation (October 4, 1862)*
- Annex 41: *Denmark—Treaty of Friendship, Commerce and Navigation (October 19, 1846)*
- Annex 42: *France—Treaty of Friendship, Commerce and Navigation (October 29, 1857)*
- Annex 43: *Germany—Treaty of Friendship, Commerce and Navigation and Consular Convention (March 25, 1879)*
- Annex 44: *United Kingdom of Great Britain and Northern Island—Treaty of Friendship, Commerce and Navigation (July 10, 1851)*
- Annex 45: *Italy—Treaty of Amity, Commerce and Navigation (July 22, 1863)*
- Annex 46: *Japan—Treaty of Amity and Commerce (August 19, 1871)*
- Annex 47: *Netherlands—Treaty of Friendship, Commerce and Navigation (October 16, 1862)*
- Annex 48: *Portugal—Treaty of Friendship and Commerce (May 5, 1882)*
- Annex 49: *Russia—Treaty of Commerce and Navigation (June 19, 1869)*
- Annex 50: *Spain—Treaty of Peace and Friendship (October 29, 1863)*
- Annex 51: *Switzerland—Treaty of Friendship, Establishment and Commerce (July 20, 1864)*

- Annex 52: Sweden and Norway—*Treaty of Friendship, Commerce and Navigation* (July 1, 1852)
- Annex 53: *1907 Hague Convention, V, respecting the Rights and Duties of Neutral Powers*
- Annex 54: Universal Postal Union—*Additional Act to the Universal Postal Union Convention of June 1, 1878* (March 21, 1885)
- Annex 55: War Crime Protests and Demands communicated with the United States Pacific Command without exhibits

Exhibit “5”



DAVID KEANU SAI, PH.D.

Ambassador-at-large for the Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194
Tel: (808) 383-6100
E-mail: interior@hawaiiankingdom.org
Website: <http://hawaiiankingdom.org/>

August 14, 2012

Excellency:

Recalling my country's Protest and Demand of 9 August 2012 that was acknowledged and received by Dr. Mezoui on behalf of your Excellency on 10 August 2012 pursuant to Article 35(2) of the Charter of the United Nations at the headquarters for President of the General Assembly, I would like to make the following clarifications and request.

Although the provision of Article 35(2) of the Charter of the United Nations states a "State which is not a Member of the United Nations may bring to the attention of the General Assembly any dispute," we are not in *dispute* with the United States of America with regard to the non-compliance of the 1893 *Lili'uokalani assignment & Agreement of restoration*, 1899 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law. Nor are we in *dispute* with the other named States. Rather, my country views this as a *situation* and not a *dispute*. My country's acceptance of the obligations of pacific settlement was made should a *dispute* arise with the named States in the Protest and Demand.

It is also my country's understanding that there is binding precedence with regard to the legal consequences for States, other than the United States of America, regarding the prolonged occupation of the Hawaiian Islands that are enumerated in the International Court of Justice's Advisory Opinion of 21 June 1971, *Legal Consequences for States of the continued presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970)*. While the Court's advisory opinion centered on rights of the mandatory, being Namibia, that had yet, at the time, been able to exercise self-determination and independence and, as a result, the legal consequences of States, the Hawaiian Protest and Demand centers on the rights of the Hawaiian Islands who already exercised self-determination and achieved the international recognition of its independence since 28 November 1843, and, as a result, the legal consequences of States. The Hawaiian Islands being the State, while the Hawaiian Kingdom being its government.

The United States obligations to the Hawaiian Kingdom arises from the 1893 *Lili'uokalani assignment & Agreement of restoration*, 1899 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law, where in similar fashion the

obligations of South Africa with regard to Namibia arose under the General Assembly resolution 2145 (XXI), the Security Council Resolution 276 (1970), the Charter of the United Nations, and international law. Therefore, the legal consequences for States with regard to the Hawaiian situation are enumerated as follows:

- a) Member States are under obligation (subject to (d) below) to abstain from entering into treaty relations with the United States of America in all cases in which the Government of the United States of America purports to act on behalf of or concerning the Hawaiian Islands. With respect to existing bilateral treaties member States must abstain from invoking or applying those treaties or provisions of treaties concluded by the United States of America on behalf of or concerning the Hawaiian Islands, which involve active intergovernmental co-operation. With respect to multilateral treaties, the same rule cannot be applied to certain general conventions such as those with humanitarian character, the non-performance of which may adversely affect the people of the Hawaiian Islands: it will be for the competent international organs to take specific measures in this respect.
- b) Member States are under obligation to abstain from sending diplomatic or special missions to the United States of America including in their jurisdiction the territory of the Hawaiian Islands, to abstain from sending consular agents to the Hawaiian Islands, and to withdraw any such agents already there; and to make it clear to the United States of America that the maintenance of diplomatic or consular relations does not imply any recognition of its authority with regard to the Hawaiian Islands.
- c) Member States are under obligation to abstain from entering into economic and other forms of relations with the United States of America on behalf of or concerning the Hawaiian Islands which may entrench its authority over the territory.
- d) However, non-recognition should not result in depriving the people of the Hawaiian Islands of any advantages derived from international co-operation. In particular, the illegality or invalidity of acts performed by the Government of the United States of America on behalf of or concerning the Hawaiian Islands during its illegal annexation on 12 August 1898 and subsequent prolonged occupation cannot be extended to such acts as the registration of births, deaths and marriages.

In light of the prolonged and illegal occupation of the Hawaiian Islands since 12 August 1898 and the severity of the Hawaiian situation, my country makes the following requests:

1. Because the term of the President is coming to an end next month and a new President will be entering office, my country requests that the

Protest and Demand and all relevant documents be provided to the successor President and his administration.

2. Because of the legal, political and economic severity of the Hawaiian situation and the obligation of States to abstain: (a) from entering into treaty relations with the United States of America in all cases in which the Government of the United States of America purports to act on behalf of or concerning the Hawaiian Islands; (b) from sending diplomatic or special missions to the United States of America including in their jurisdiction the territory of the Hawaiian Islands, to abstain from sending consular agents to the Hawaiian Islands, and to withdraw any such agents already there; and (c) from entering into economic and other forms of relations with the United States of America on behalf of or concerning the Hawaiian Islands which may entrench its authority over the territory, my country requests that the Hawaiian situation be placed on the agenda at the opening of the Sixty-Seventh Session of the General Assembly in order for all one hundred ninety-three (193) members of the United Nations to be made aware of the Hawaiian situation, and not just the one hundred seventy-three (173) member States named in the Protest and Demand.
3. Because of the complexities of the Hawaiian situation, my country requests that member States of the General Assembly and the Security Council peruse my doctoral dissertation titled “American Occupation of the Hawaiian Kingdom,” with particular focus on chapter 5 titled “Righting the Wrong: Beginning the Transition from Occupied State to Restored State” that proposes a general plan for the United Nations to address the prolonged occupation. The dissertation and other law journal articles on this topic I authored can be accessed on the accompanying CD to the Protest and Demand provided to your office and the other named member States in the Protest and Demand. The dissertation and law journal articles, however, can also be downloaded from the internet at www2.hawaii.edu/~anu/publications.
4. And because the General Assembly lacks the necessary powers to carry out sections 1, 2, and 4 of Section II—Nature of the Claim, Protest and Demand (pages 5-6), my country requests the Sixty-Seventh Session of the General Assembly to enlist the co-operation of the Security Council. The Security Council is vested with the necessary authority under Article 24 of the Charter.

Please accept, Excellency, the assurances of my highest consideration,

A handwritten signature in black ink, appearing to read "David Keanu Sai". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping tail.

David Keanu Sai

cc: Executive Secretary, Council of Presidents
Executive Secretary, Group of 77 at the United Nations
Permanent Mission for China
Named States in the Protest and Demand

Exhibit “6”

Instrument of Accession

Whereas the Statute of the International Criminal Court was concluded at Rome on 17 July 1998;

And Whereas Article 125(3) of the Statute specifies that the Statute shall be open to accession by all States;

Now Therefore, the Hawaiian Kingdom, having considered the Statute, hereby Accedes to it, and undertakes faithfully to abide by all the provisions contained therein.



In Witness Whereof, I have hereunto set my hand, and caused the Great Seal of the Kingdom to be affixed this 23rd day of November A.D. 2012.

Peter Umialiloa Sai,
Vice-Chairman of the Acting Council of Regency
Acting Minister of Foreign Affairs

By the Council

Kau'i P. Sai-Dudoit,
Acting Minister of Finance

Exhibit “7”



DAVID KEANU SAI, PH.D.

Ambassador-at-large for the Hawaiian Kingdom

P.O. Box 2194

Honolulu, HI 96805-2194

Tel: (808) 383-6100

E-mail: interior@hawaiiankingdom.org

Website: <http://hawaiiankingdom.org/>

10 December 2012

Secretariat
Treaty Section
Office of Legal Affairs
United Nations
New York, NY 10017

Excellency:

In accordance with Article 125(3) of the Rome Statute, I have the honor on behalf of the *acting* government, a State not a member of the United Nations, of depositing with the United Nations Treaty Section my government's instrument of accession to the Roman Statute, and that my government understands that the Statute shall enter into force on the first day of the month after the 60th day following the deposit of my government's instrument of accession.

I am also enclosing my government's Protest and Demand of the prolonged occupation of the Hawaiian Kingdom that was deposited with the President of the United Nations General Assembly pursuant to Article 35(2) of the United Nations Charter on 10 August 2012. The Protest and Demand was acknowledged and received by Mrs. Hanifa Mezoui, Ph.D., Special Coordinator, Third Committee and Civil Society, Office of the President of the Sixty-Sixth Session of the General Assembly. Attached are the Protest and Demand and an accompanying CD with Annexes.

Please accept, Excellency, the assurances of my highest consideration,

A handwritten signature in black ink, appearing to read 'David Keanu Sai'.

David Keanu Sai

Enclosures

Exhibit “8”



DAVID KEANU SAI, PH.D.

Ambassador-at-large for the Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194
Tel: (808) 383-6100
E-mail: interior@hawaiiankingdom.org
Website: <http://hawaiiankingdom.org/>

ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge the receipt of the following document from the Ambassador-at-large for the Hawaiian Kingdom, a State not a member of the United Nations, deposited with the Secretary General of the United Nations General Assembly, by the United Nations Treaty Section, pursuant to Article 125(3) of the Rome Statute:

1. Instrument of accession dated 28 November 2012.

Bernadette MUTIRENDE

(Signature)

A handwritten signature in black ink, appearing to read 'Bernadette Mutirende'.

Dec 10, 2012

(Date)

Exhibit “9”

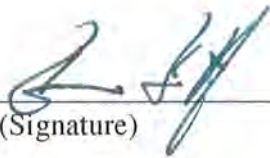
ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge the receipt of the following documents from the Hawaiian Kingdom, a State not a member of the United Nations, deposited with the Swiss Federal Council, by the Swiss Federal Department of Foreign Affairs, pursuant to Article 156 of the 1949 Geneva Convention for the Protection of Civilian Persons in Time of War:

1. Instrument of accession to the 1949 Geneva Convention for the Protection of Civilian Persons in Time of War, dated 28 November 2012.
2. Protest and Demand dated 9 August 2012.
3. CD of Annexes to the Protest and Demand and other relevant documents.
4. DVD Packet of the Larsen v. Hawaiian Kingdom arbitration case.

Benno Bättig

(Print name)



(Signature)

14.1.2013

(Date)

Instrument of Accession

Whereas a Convention for the Protection of Civilian Persons in Time of War was concluded at Geneva on 12 August 1949;

And Whereas Article 155 of the Convention specifies that the Convention shall be open to accession by any State Power;

Now Therefore, the Hawaiian Kingdom, having considered the Convention, hereby Accedes to it, and undertakes faithfully to abide by all the provisions contained therein.



In Witness Whereof, I have hereunto set my hand, and caused the Great Seal of the Kingdom to be affixed this 20th day of November A.D. 2012.

Peter Umialiloa Sai,
Vice-Chairman of the Acting Council of Regency
Acting Minister of Foreign Affairs

By the Council

Kau'i P. Sai-Dudoit,
Acting Minister of Finance

DECLARATION OF LELAND PA

I, LELAND PA, declare under penalty that the following is true and correct:

1. I am a police officer for the Hawai'i Police Department, badge number 284.
2. According to the Hawai'i Police Department Standards of Conduct, section 5.2.9(h), "General Responsibilities—Officers shall, at all times, take appropriate action to: Identify potentially serious law enforcement and government problems".
3. As part of my duty to identify potentially serious law enforcement and government problems, I obtained copies of war crime complaints from the Law Office of Dexter K. Kaiama, esquire, Seven Waterfront Plaza 500 Ala Moana Blvd., suite 400 Honolulu, Hawai'i 96813, in early September 2012. I began my inquiry into these complaints to see how it would affect myself as a police officer for the County of Hawai'i and if it would pose potential problems for law enforcement and government officials.
4. These complaints were filed with the HQ U.S. Pacific Command, Camp Smith, Hawai'i, and the Office of the United Nations High Commissioner for Human Rights Geneva, Switzerland. These complaints accused State of Hawai'i Third Circuit Court Judges Greg Nakamura and Glen S. Hara, and District Court Judge Barbara Takase of willfully depriving a protected person the rights of a fair and regular trial during occupation, being a war crime under the 1949 Geneva Convention, IV. These complaints were based on the 1893 Executive Agreements between U.S. President Grover Cleveland and Queen Lili'uokalani, 1907 Hague Convention, IV, 1949 Geneva Convention, IV, and U.S. Army Field Manual 27-10.
5. On 11-06-12 at about 2230 hours I telephoned the Office of the United Nations High Commissioner for Human Rights, Human Rights Council Branch-Complaint Procedure Unit. United Nations Office at Geneva CH-1211 Geneva 10, Switzerland Bus. Ph: 011 412 291 79220.
6. I spoke with a male representative that confirmed the complaints but could not provide any more assistance except to advise me to contact U.S. departments that deal with war crime complaints.
7. On 11-08-12 at about 0930 hours I telephoned HQ USPACOM, P.O. Box 64028 Camp H.M. Smith, Hawai'i, PH: (808) 477-6378. I spoke with a male party who identified himself as being RONALD WINFREY, Principal Deputy Staff Judge Advocate, U.S. Pacific Command. I informed him of my inquiry and concerns of how these complaints could directly affect my duties and me as a police officer for the County of Hawai'i.
8. Mr. Winfrey stated he receives many complaints and some are not really complaints but long winded writings. I specified that the war crime complaints I'm referring to

were coming from the law office of Dexter K. Kaiama, esquire.

9. Mr. Winfrey stated he knows those complaints because out of all the complaints he has read those are the most precise and clear.
10. As I began discussing the basis of the complaints such as no treaty of annexation, Mr. Winfrey candidly and without hesitation said, "Oh yes, there is no treaty".
11. I brought to his attention the two sole executive agreements mentioned in the complaint. The 1893 Lili'uokalani assignment and the Agreement of restoration entered into by United States President Grover Cleveland and Queen Lili'uokalani for the investigation and settlement of the illegal overthrow.
12. I stated that according to the U.S. Supreme Court sole executive agreements are treaties. As treaties, they bind the United States President to administer Hawaiian Kingdom Law and the Laws of occupation in Hawai'i.
13. Mr. Winfrey stated that the executive agreements and the issue of Hawai'i being occupied have never been ruled on in a U.S. Court and they remain unresolved.
14. Mr. Winfrey in an attempt to ease my concerns stated that these types of cases when addressed by U.S. Courts will get dismissed for lack of jurisdiction and not one has gone up on appeal.
15. I informed Mr. Winfrey that there is a Federal case that went on appeal dealing with the exact subject matter and he said, "I was not aware of that".
16. I stated that the case was dismissed for lack of jurisdiction because it posed a political question. One of the cases the Judge cited was *Lin v. United States*. In *Lin*, the Appellate Court held that, although the court had the authority to construe treaties, the political question doctrine deprived it of the authority to do so because the executive failed to recognize Taiwan's sovereignty. However, once the executive recognizes the sovereign then there is no political question and the court has jurisdiction.
17. Unlike Taiwan, the Executive already determined Hawai'i's sovereignty on July 6, 1844. The executive also extended further recognition by entering into the abovementioned sole executive agreements with Queen Lili'uokalani.
18. I asked Mr. Winfrey the following questions and got the following responses.
19. Since there is no treaty, can the unresolved issues of the executive agreements and Hawaii's occupation get resolved by a U.S. Court in the future?
20. Mr. Winfrey stated that it is possible.
21. If a U.S. Court should find in favor of plaintiff's claim regarding the executive

agreements and Hawai'i's occupation, then the prosecution of said War Crimes would come into play?

22. Mr. Winfrey stated that is possible.

23. Since there is no treaty, the plaintiff does not need a U.S. court ruling? The Plaintiff could get these issues resolved in an International venue and then prosecution of war crimes would come into play?

24. Mr. Winfrey stated that is possible.

25. I informed Mr. Winfrey that as a police officer I have sworn an oath to uphold the laws and constitution of the United States. Article 6, clause 2 of the U.S. constitution declares that treaties, which includes executive agreements, are the supreme law of the land. Because there is no treaty of annexation we are faced with a difficult situation, which needs clarification and I find it necessary to notify my superiors.

26. Mr. Winfrey stated he understood my concerns and thanked me for the conversation and for being so knowledgeable on the subject.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: Hilo, Hawai'i, December 15, 2012.



Leland Pa

HAWAII POLICE DEPARTMENT

COMPLAINT REPORT

OPS 13-012

Internal

External

Complaint Received: Date 2/28/2013 Time 0815 hrs By: Capt. Kawamoto

How Reported: On View In Person Other

Referred By: Captain Samuel Kawamoto

Assigned By: Captain Samuel Kawamoto Date 2/28/2013 Time 0815 hrs

COMPLAINANT: Hawaii Police Department

Address: 349 Kapiolani Street Hilo, Hawaii Phone: 935-3311

Employer: _____ Address: _____

Phone: _____

Victim: _____ Address: _____

Phone: _____

Witness(s): _____ Address: _____

: _____ Phone: _____

ACCUSED OFFICER: Officer Leland Pa Badge # 284

Rank: Police Officer II District/Division: Hilo Cellblock Watch: _____

DATE OF INCIDENT: 02-28-2013 TIME: 0809 hrs ON OFF DUTY

LOCATION OF INCIDENT: 777 Kilauea Avenue Hilo, Hawaii

ALLEGED VIOLATION: _____

(G.O. VIOLATION) General Order 300, 5., 5.2., 5.2.1., Standard of Conduct (1 Charge)

General Order 300, 5., 5.3., 5.3.1., d. Misuse of Position or Office (8 Charges)

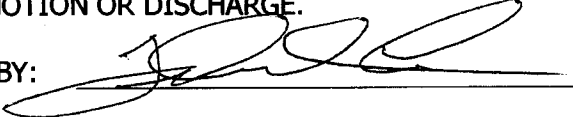
General Order 300, 5., 5.3., 5.3.4., jj. Subversive Acts Prohibited (8 Charges)

General Order 300, 5., 5.2., 5.2.3., RE: Procedures Manual Section 6.3., 4., 4.4., 4.4.1., b. (7 Charges)

General Order 300, 5., 5.2., 5.2.3., RE: Procedures Manual Section 6.3., 4., 4.4., 4.4.3., c. (7 Charges)

General Order 300, 5., 5.2., 5.2.3., RE: Procedures Manual Section 13.2., 12., 12.1., 12.1.1. (6 Charges)

IN ACCORDANCE WITH ARTICLE 12, "POLICE OFFICER'S PROTECTION" OF THE SHOPO CONTRACT, YOU ARE BEING INFORMED IN WRITING THAT THIS COMPLAINT IS OF SUCH A NATURE THAT IT COULD RESULT IN YOUR DISCIPLINE, DEMOTION OR DISCHARGE.

COPY RECEIVED BY:  Date 03-01-13 Time 1450 hrs

INVESTIGATOR: _____ Rank: _____

SERVED BY: _____ Rank: _____

ALLEGED VIOLATION(S)

CHARGE 1 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.1. Standard of Conduct – Officers and employees shall conduct their lives in such a manner as to avoid bringing themselves or the department into disrepute.

Specification

It is alleged that on February 28, 2013, while off duty, you telephoned State of Hawaii Judges and Private Attorneys identifying yourself as a Police Officer with the Hawaii County Police Department and informed them that they are the subjects of war crime complaints made against them and requested that they be interviewed as part of your investigation and provide a statement to you.

Your actions of contacting these individuals in such a manner brought disrepute to yourself and the department, which is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.1. Standard of Conduct.

CHARGE 2 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official

positions with the department to gain personal favors or to conduct non-police activities.

Specification

It is alleged that on February 28, 2013, while off-duty, you telephoned Court Clerk Shaylina Quenga, identified yourself as a Police Officer from the Hawaii County Police Department and left a message for Judge Harry Freitas for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

CHARGE 3 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

Specification

It is alleged that on February 28, 2013, while off duty, you telephoned and spoke to Court Clerk Shaylina Quenga and identified

yourself as a Police Officer from the Hawaii County Police Department and left a message for Judge Harry Freitas informing him that you are conducting an investigation of committing war crimes and he is a suspect.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules of Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

CHARGE 4 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.

Specification

It is alleged that on February 28, 2013, while off-duty, you telephoned Judge Greg Nakamura and left a message for him identifying yourself as a Police Officer from the Hawaii County Police Department for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

CHARGE 5 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

Specification

It is alleged that on February 28, 2013, while off duty, you telephoned Judge Greg Nakamura and left a message identifying yourself as a Police Officer from the Hawaii County Police Department and left a message informing him that you are conducting an investigation of a complaint made against him for committing war crimes.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules or Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

CHARGE 6 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.

Specification

It is alleged that on February 28, 2013, while off-duty, you telephoned Judge Glenn Hara and left a message identifying yourself as a Police Officer from the Hawaii County Police Department and left a message for him for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

CHARGE 7 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

Specification

It is alleged that on February 28, 2013, while off duty, you telephoned Judge Glenn Hara identifying yourself as a Police Officer from the Hawaii County Police Department and left a message informing him that you are conducting an investigation of a complaint made against him for committing war crimes.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules of Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

CHARGE 8 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.

Specification

It is alleged that on February 28, 2013, while off-duty, you telephoned Court Clerk Jaime Takimoto, identified yourself as a Police Officer from the Hawaii County Police Department and left a message for Judge Ronald Ibarra for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

CHARGE 9 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

Specification

It is alleged that on February 28, 2013, while off duty, you telephoned Court Clerk Jaime Takimoto identifying yourself as a Police Officer from the Hawaii County Police Department and left a message for Judge Ronald Ibarra informing him that you are conducting an investigation of a complaint made against him for committing war crimes.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules of Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

CHARGE 10 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.

Specification

It is alleged that on February 28, 2013, while off-duty, you telephoned Attorney Robert Kim, identified yourself as a Police Officer from the Hawaii County Police Department for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

CHARGE 11 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

Specification

It is alleged that on February 28, 2013, while off duty, you telephoned Attorney Robert Kim, identified yourself as a Police Officer from the Hawaii County Police Department and informed him that you are conducting an investigation of a complaint made against him for committing war crimes.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules of Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

CHARGE 12 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.

Specification

It is alleged that on February 28, 2013, while off-duty, you telephoned Attorney Edmund Haisuka, and identified yourself as a Police Officer from the Hawaii County Police Department for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

CHARGE 13 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

Specification

It is alleged that on February 28, 2013, while off duty, you telephoned Attorney Edmund Haitsuka, identified yourself as a Police Officer from the Hawaii County Police Department and informed him that you are conducting an investigation of a complaint made against him for committing war crimes.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules of Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

CHARGE 14 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.

Specification

It is alleged that on February 28, 2013, while off-duty, you telephoned Attorney Robert Triantos, and identified yourself as a Police Officer from the Hawaii County Police Department for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

CHARGE 15 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

Specification

It is alleged that on February 28, 2013, while off duty, you telephoned Attorney Robert Triantos, identified yourself as a Police Officer from the Hawaii County Police Department and informed him that you are conducting an investigation of a complaint made against him for committing war crimes.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules of Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

CHARGE 16 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.

Specification

It is alleged that on January 24, 2013, you telephoned Attorney Peter Kubota, and identified yourself as a Police Officer from the Hawaii County Police Department for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

CHARGE 17 General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

Specification

It is alleged that on January 24, 2013, you telephoned Attorney Peter Kubota, identified yourself as a Police Officer from the Hawaii County Police Department and informed him that you are conducting an investigation of a complaint made against him for committing war crimes.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules of Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

CHARGE 18 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.1. INCIDENT REPORT, ACCIDENT REPORT, MISCELLANEOUS SERVICE REPORT

b. The initial report module shall be completed and forwarded to a supervisor for approval within 24 hours by the employee being assigned to the case.

- In the event that report is unable to be completed within 24 hours, the approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reason for the delay.

Specification

On or about February 22, 2013, it is alleged that you initiated police report number C13004901 and did not forward the initial report to a supervisor for approval within 24 hours as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.1., b.

CHARGE 19 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.3. SUPPLEMENTAL REPORTS

c. Initial supplementaries shall be dictated within 24 hours after a report number is drawn. An initial supplementary shall include, at the minimum, details of all investigative work conducted at the time the report was taken, including all statements, furthermore it shall include the direction in which the investigation is proceeding.

- In any event, the initial supplementary should be completed no later than 48 hours after a report number is drawn.
- The approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reasons for any delays in the initial supplementary report being completed within the allotted time frame.

Specification

On or about February 22, 2013, it is alleged that after initiating police report number C13004901, you did not dictate the initial supplementary report within 24 hours, or in any event no later than 48 hours after the report number was drawn.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedure Manual 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.3., c.

CHARGE 20 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.1. INCIDENT REPORT, ACCIDENT REPORT, MISCELLANEOUS SERVICE REPORT

b. The initial report module shall be completed and forwarded to a supervisor for approval within 24 hours by the employee being assigned to the case.

- In the event the report is unable to be completed within 24 hours, the approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reason for the delay.

Specification

On or about February 22, 2013, it is alleged that you initiated police report number C13004904 and did not forward the initial report to a supervisor for approval within 24 hours as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.1., b.

CHARGE 21 General Order 300 Standards of Conduct

- 5. Procedures
- 5.2. Professional Conduct and Responsibilities
- 5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

- 4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

- 4.4.3. SUPPLEMENTAL REPORTS

- c. Initial supplementaries shall be dictated within 24 hours after a report number is drawn. An initial supplementary shall include, at the minimum, details of all investigative work conducted at the time the report was taken, including all statements, furthermore it shall include the direction in which the investigation is proceeding.
- In any event, the initial supplementary should be completed no later than 48 hours after a report number is drawn.
 - The approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reasons for any delays in the initial supplementary report being completed within the allotted time frame.

Specification

On or about February 22, 2013, it is alleged that after initiating police report number C13004904, you did not dictate the initial supplementary report within 24 hours, or in any event no later than 48 hours after the report number was drawn.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedure Manual 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.3., c.

CHARGE 22 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.1. INCIDENT REPORT, ACCIDENT REPORT, MISCELLANEOUS SERVICE REPORT

b. The initial report module shall be completed and forwarded to a supervisor for approval within 24 hours by the employee being assigned to the case.

- In the event that report is unable to be completed within 24 hours, the approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reason for the delay.

Specification

On or about February 22, 2013, it is alleged that you initiated police report number C13004910 and did not forward the initial report to a supervisor for approval within 24 hours as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies,

etc., RE: Procedures Manual Section 6.3 REPORT WRITING
PROCEDURES, 4.4., 4.4.1., b.

CHARGE 23 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING
PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.3. SUPPLEMENTAL REPORTS

c. Initial supplementaries shall be dictated within 24 hours after a report number is drawn. An initial supplementary shall include, at the minimum, details of all investigative work conducted at the time the report was taken, including all statements, furthermore it shall include the direction in which the investigation is proceeding.

- In any event, the initial supplementary should be completed no later than 48 hours after a report number is drawn.

- The approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reasons for any delays in the initial supplementary report being completed within the allotted time frame.

Specification

On or about February 22, 2013, it is alleged that after initiating police report number C13004910, you did not dictate the initial supplementary report within 24 hours, or in any event no later than 48 hours after the report number was drawn.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedure Manual 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.3., c.

CHARGE 24 General Order 300 Standards of Conduct

- 5. Procedures
 - 5.2. Professional Conduct and Responsibilities
 - 5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

- 4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.1. INCIDENT REPORT, ACCIDENT REPORT,
MISCELLANEOUS SERVICE REPORT

- b. The initial report module shall be completed and forwarded to a supervisor for approval within 24 hours by the employee being assigned to the case.
 - In the event that report is unable to be completed within 24 hours, the approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reason for the delay.

Specification

On or about February 22, 2013, it is alleged that you initiated police report number C13004911 and did not forward the initial report to a supervisor for approval within 24 hours as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.1., b.

CHARGE 25 General Order 300 Standards of Conduct

5. Procedures
 - 5.2. Professional Conduct and Responsibilities
 - 5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING
PROCEDURES

4.4. Investigating officers are responsible for the
timely submittal of all reports, which include:

4.4.3. SUPPLEMENTAL REPORTS

- c. Initial supplementaries shall be dictated
within 24 hours after a report number is
drawn. An initial supplementary shall
include, at the minimum, details of all
investigative work conducted at the time
the report was taken, including all
statements, furthermore it shall include
the direction in which the investigation is
proceeding.
- In any event, the initial
supplementary should be
completed no later than 48 hours
after a report number is drawn.
 - The approving supervisor shall
make a notation in the RMS
Incident Module comments tab as
to the reasons for any delays in
the initial supplementary report
being completed within the allotted
time frame.

Specification

On or about February 22, 2013, it is alleged that after initiating
police report number C13004911, you did not dictate the initial
supplementary report within 24 hours, or in any event no later than
48 hours after the report number was drawn.

Your action is contrary to and in violation of General Order 300
Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and

Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedure Manual 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.3., c.

CHARGE 26 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.1. INCIDENT REPORT, ACCIDENT REPORT, MISCELLANEOUS SERVICE REPORT

b. The initial report module shall be completed and forwarded to a supervisor for approval within 24 hours by the employee being assigned to the case.

- In the event that report is unable to be completed within 24 hours, the approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reason for the delay.

Specification

On or about February 22, 2013, it is alleged that you initiated police report number C13004913 and did not forward the initial report to a supervisor for approval within 24 hours as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.1., b.

CHARGE 27 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.3. SUPPLEMENTAL REPORTS

c. Initial supplementaries shall be dictated within 24 hours after a report number is drawn. An initial supplementary shall include, at the minimum, details of all investigative work conducted at the time the report was taken, including all statements, furthermore it shall include

the direction in which the investigation is proceeding.

- In any event, the initial supplementary should be completed no later than 48 hours after a report number is drawn.
- The approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reasons for any delays in the initial supplementary report being completed within the allotted time frame.

Specification

On or about February 22, 2013, it is alleged that after initiating police report number C13004913, you did not dictate the initial supplementary report within 24 hours, or in any event no later than 48 hours after the report number was drawn.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedure Manual 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.3., c.

CHARGE 28 General Order 300 Standards of Conduct

- 5. Procedures
- 5.2. Professional Conduct and Responsibilities
- 5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i

and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.1. INCIDENT REPORT, ACCIDENT REPORT, MISCELLANEOUS SERVICE REPORT

b. The initial report module shall be completed and forwarded to a supervisor for approval within 24 hours by the employee being assigned to the case.

- In the event that report is unable to be completed within 24 hours, the approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reason for the delay.

Specification

On or about February 22, 2013, it is alleged that you initiated police report number C13004915 and did not forward the initial report to a supervisor for approval within 24 hours as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.1., b.

CHARGE 29 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.3. SUPPLEMENTAL REPORTS

c. Initial supplementaries shall be dictated within 24 hours after a report number is drawn. An initial supplementary shall include, at the minimum, details of all investigative work conducted at the time the report was taken, including all statements, furthermore it shall include the direction in which the investigation is proceeding.

- In any event, the initial supplementary should be completed no later than 48 hours after a report number is drawn.
- The approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reasons for any delays in the initial supplementary report being completed within the allotted time frame.

Specification

On or about February 22, 2013, it is alleged that after initiating police report number C13004915, you did not dictate the initial supplementary report within 24 hours, or in any event no later than 48 hours after the report number was drawn.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedure Manual 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.3., c.

CHARGE 30 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.1. INCIDENT REPORT, ACCIDENT REPORT, MISCELLANEOUS SERVICE REPORT

b. The initial report module shall be completed and forwarded to a supervisor for approval within 24 hours by the employee being assigned to the case.

- In the event that report is unable to be completed within 24 hours, the approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reason for the delay

Specification

On or about February 22, 2013, it is alleged that you initiated police report number C13004916 and did not forward the initial report to a supervisor for approval within 24 hours as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.1., b.

CHARGE 31 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING
PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.3. SUPPLEMENTAL REPORTS

- c. Initial supplementaries shall be dictated within 24 hours after a report number is drawn. An initial supplementary shall include, at the minimum, details of all investigative work conducted at the time the report was taken, including all statements, furthermore it shall include the direction in which the investigation is proceeding.
- In any event, the initial supplementary should be completed no later than 48 hours after a report number is drawn.
 - The approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reasons for any delays in the initial supplementary report being completed within the allotted time frame.

Specification

On or about February 22, 2013, it is alleged that after initiating police report number C13004916, you did not dictate the initial supplementary report within 24 hours, or in any event no later than 48 hours after the report number was drawn.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedure Manual 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.3., c.

CHARGE 32 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES

12. CUSTODY AND TRANSMITTAL OF
EVIDENCE/PROPERTY

12.1. General –

12.1.1. Employees who recover evidence/property shall initiate the chain of custody and deliver the evidence/property to the appropriate Repository by the end of their tour of duty unless exceptional circumstances exists, e.g., medical emergency, and is approved by the employee's supervisor.

Specification

On or about February 22, 2013, it is alleged that you recovered evidence under police report number C13004901 and did not deliver the evidence/property to the appropriate Repository by the end of your tour of duty as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES, 12., 12.1., 12.1.1.

CHARGE 33 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES

12. CUSTODY AND TRANSMITTAL OF
EVIDENCE/PROPERTY

12.1. General –

12.1.1. Employees who recover evidence/property shall initiate the chain of custody and deliver the evidence/property to the appropriate Repository by the end of their tour of duty unless exceptional circumstances exists, e.g., medical emergency, and is approved by the employee's supervisor.

Specification

On or about February 22, 2013, it is alleged that you recovered evidence under police report number C13004904 and did not deliver the evidence/property to the appropriate Repository by the end of your tour of duty as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES, 12., 12.1., 12.1.1.

CHARGE 34 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES

12. CUSTODY AND TRANSMITTAL OF
EVIDENCE/PROPERTY

12.1 General –

12.1.1. Employees who recover evidence/property shall initiate the chain of custody and deliver the evidence/property to the appropriate Repository by the end of their tour of duty unless exceptional circumstances exists, e.g., medical emergency, and is approved by the employee's supervisor.

Specification

On or about February 22, 2013, it is alleged that you recovered evidence under police report number C13004910 and did not deliver the evidence/property to the appropriate Repository by the end of your tour of duty as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES, 12., 12.1., 12.1.1.

CHARGE 35 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES

12. CUSTODY AND TRANSMITTAL OF
EVIDENCE/PROPERTY

12.1 General –

12.1.1. Employees who recover evidence/property shall initiate the chain of custody and deliver the evidence/property to the appropriate Repository by the end of their tour of duty unless exceptional circumstances exists, e.g., medical emergency, and is approved by the employee's supervisor.

Specification

On or about February 22, 2013, it is alleged that you recovered evidence under police report number C13004911 and did not deliver the evidence/property to the appropriate Repository by the end of your tour of duty as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES, 12., 12.1., 12.1.1.

CHARGE 36 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES

12. CUSTODY AND TRANSMITTAL OF
EVIDENCE/PROPERTY

12.1 General –

12.1.1. Employees who recover evidence/property shall initiate the chain of custody and deliver the evidence/property to the appropriate Repository by the end of their tour of duty unless exceptional circumstances exists, e.g., medical emergency, and is approved by the employee's supervisor.

Specification

On or about February 22, 2013, it is alleged that you recovered evidence under police report number C13004915 and did not deliver the evidence/property to the appropriate Repository by the end of your tour of duty as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES, 12., 12.1., 12.1.1.

CHARGE 37 General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES

12. CUSTODY AND TRANSMITTAL OF
EVIDENCE/PROPERTY

12.1 General –

12.1.1. Employees who recover evidence/property shall initiate the chain of custody and deliver the evidence/property to the appropriate Repository by the end of their tour of duty unless exceptional circumstances exists, e.g., medical emergency, and is approved by the employee's supervisor.

Specification

On or about February 22, 2013, it is alleged that you recovered evidence under police report number C13004916 and did not deliver the evidence/property to the appropriate Repository by the end of your tour of duty as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES, 12., 12.1., 12.1.1.

March 01, 2013

TO : LELAND PA, POLICE OFFICER, HILO CELLBLOCK
FROM : BRIAN D. PRUDENCIO, POLICE DETECTIVE, OFFICE OF PROFESSIONAL STANDARDS
SUBJECT: ADMINISTRATIVE INVESTIGATION, OPS 2013-012
GARRITY RIGHTS

You are being informed in writing of your Garrity Rights in accordance with the current State of Hawai'i Organization of Police Officers Agreement with the County of Hawai'i, Article 12. Police Officer's Protection – Administrative Investigations and Interrogations. B. Administrative Investigations and Interrogations of Internal and External Complaints. 2. Limitations. o. Garrity Rights. As follows:

It is my understanding that this statement is made for administrative, internal Police Department purposes only and will not be used as part of an official criminal investigation. This statement is made by me after being ordered to do so by lawful supervisory officers. It is my understanding that refusing to obey an order to make this statement that I can be disciplined for insubordination and that the punishment for insubordination can be up to and including termination of employment. This statement is made only pursuant to such orders and the potential punishment/discipline that can result for failure to obey that order.
Garrity v. New Jersey, 385 U.S. 493, 87 S. Ct. 616, 17 L.Ed.2d 562 (1967).

REVIEWED AND SIGNED: _____

DATE/TIME: _____

SERVED BY: _____

DATE/TIME: _____

March 01, 2013

TO : LELAND PA, POLICE OFFICER, HILO CELLBLOCK
FROM : BRIAN D. PRUDENCIO, DETECTIVE, OFFICE OF PROFESSIONAL STANDARDS
SUBJECT: ADMINISTRATIVE INVESTIGATION, OPS 2013-012
MEMORANDUM RESPONSE TO MISCONDUCT COMPLAINT

Per Article 12 of the Collective Bargaining Agreement, I am providing you with a copy of the alleged misconduct complaint.

Be advised:

1. You have the right to review Article 12 of the SHOPO union contract, and I am affording you the opportunity to consult with a union representative or someone else of your choice prior to submitting your memorandum.
2. Through your signature, you have acknowledged those rights prior to submitting your memorandum.
3. You are directed to submit a memorandum in response to this complaint to me within seven (7) days from the date of receipt.
4. Should your explanation of the events be unclear or lacking in detail, you will be required to submit to an interrogation as defined in Article 12 of the collective bargaining agreement to further clarify your memorandum and the allegations made against you.

By authority of the Police Chief, you are hereby ordered to answer this complaint specifically, directly and narrowly relating to your duties and actions as a member of the Hawai'i County Police Department.

REVIEWED AND SIGNED: 

DATE/TIME: 03-01-13 / 1511

SERVED BY: 

DATE/TIME: 03-01-13 / 1511

DATE DUE: 03-08-13

be used to commit or to facilitate the commission of such violation; and

(2) any property, real or personal, constituting or derived from any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(b) PROPERTY SUBJECT TO FORFEITURE.—

(1) IN GENERAL.—The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(B) Any property, real or personal, that constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) APPLICABILITY OF CHAPTER 46.—The provisions of chapter 46 of this title relating to civil forfeitures shall apply to any seizure or civil forfeiture under this subsection.

(Added Pub. L. 109-164, title I, §103(d)(1), Jan. 10, 2006, 119 Stat. 3563.)

CHAPTER 118—WAR CRIMES

Sec.	
2441.	War crimes.
2442.	Recruitment or use of child soldiers.

AMENDMENTS

2008—Pub. L. 110-340, §2(a)(3)(A), Oct. 3, 2008, 122 Stat. 3736, added item 2442.

1996—Pub. L. 104-294, title VI, §605(p)(2), Oct. 11, 1996, 110 Stat. 3510, redesignated item 2401 as 2441.

§ 2441. War crimes

(a) OFFENSE.—Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

(b) CIRCUMSTANCES.—The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

(c) DEFINITION.—As used in this section the term “war crime” means any conduct—

(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party;

(2) prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907;

(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or

(4) of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996

(Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians.

(d) COMMON ARTICLE 3 VIOLATIONS.—

(1) PROHIBITED CONDUCT.—In subsection (c)(3), the term “grave breach of common Article 3” means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

(B) CRUEL OR INHUMAN TREATMENT.—The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrat-

ing, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

(H) **SEXUAL ASSAULT OR ABUSE.**—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

(I) **TAKING HOSTAGES.**—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

(2) **DEFINITIONS.**—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

(A) the term “severe mental pain or suffering” shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340(2) of this title;

(B) the term “serious bodily injury” shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title;

(C) the term “sexual contact” shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title;

(D) the term “serious physical pain or suffering” shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

- (i) a substantial risk of death;
- (ii) extreme physical pain;
- (iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or
- (iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and

(E) the term “serious mental pain or suffering” shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term “severe mental pain or suffering” (as defined in section 2340(2) of this title), except that—

- (i) the term “serious” shall replace the term “severe” where it appears; and
- (ii) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term “serious and non-transitory mental harm (which need not be prolonged)” shall replace the term “prolonged mental harm” where it appears.

(3) **INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.**—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an of-

fense under subsection (a) by reasons of subsection (c)(3) with respect to—

- (A) collateral damage; or
- (B) death, damage, or injury incident to a lawful attack.

(4) **INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.**—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.

(5) **DEFINITION OF GRAVE BREACHES.**—The definitions in this subsection are intended only to define the grave breaches of common Article 3 and not the full scope of United States obligations under that Article.

(Added Pub. L. 104–192, §2(a), Aug. 21, 1996, 110 Stat. 2104, §2401; renumbered §2441, Pub. L. 104–294, title VI, §605(p)(1), Oct. 11, 1996, 110 Stat. 3510; amended Pub. L. 105–118, title V, §583, Nov. 26, 1997, 111 Stat. 2436; Pub. L. 107–273, div. B, title IV, §4002(e)(7), Nov. 2, 2002, 116 Stat. 1810; Pub. L. 109–366, §6(b)(1), Oct. 17, 2006, 120 Stat. 2633.)

REFERENCES IN TEXT

Section 101 of the Immigration and Nationality Act, referred to in subsec. (b), is classified to section 1101 of Title 8, Aliens and Nationality.

The date of the enactment of the Military Commissions Act of 2006, referred to in subsec. (d)(2)(E)(ii), is the date of enactment of Pub. L. 109–366, which was approved Oct. 17, 2006.

AMENDMENTS

2006—Subsec. (c)(3). Pub. L. 109–366, §6(b)(1)(A), added par. (3) and struck out former par. (3) which read as follows: “which constitutes a violation of common Article 3 of the international conventions signed at Geneva, 12 August 1949, or any protocol to such convention to which the United States is a party and which deals with non-international armed conflict; or”.

Subsec. (d). Pub. L. 109–366, §6(b)(1)(B), added subsec. (d).

2002—Subsecs. (a) to (c). Pub. L. 107–273 made technical correction to directory language of Pub. L. 105–118, §583. See 1997 Amendment notes below.

1997—Subsec. (a). Pub. L. 105–118, §583(1), as amended by Pub. L. 107–273, substituted “war crime” for “grave breach of the Geneva Conventions”.

Subsec. (b). Pub. L. 105–118, §583(2), as amended by Pub. L. 107–273, substituted “war crime” for “breach” in two places.

Subsec. (c). Pub. L. 105–118, §583(3), as amended by Pub. L. 107–273, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(c) **DEFINITIONS.**—As used in this section, the term ‘grave breach of the Geneva Conventions’ means conduct defined as a grave breach in any of the international conventions relating to the laws of warfare signed at Geneva 12 August 1949 or any protocol to any such convention, to which the United States is a party.”

1996—Pub. L. 104–294 renumbered section 2401 of this title as this section.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–366, §6(b)(2), Oct. 17, 2006, 120 Stat. 2635, provided that: “The amendments made by this subsection [amending this section], except as specified in subsection (d)(2)(E) of section 2441 of title 18, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 [amending this section] (as amended by section 4002(e)(7) of Public Law 107–273).”

§ 1512. Tampering with a witness, victim, or an informant

(a)(1) Whoever kills or attempts to kill another person, with intent to—

(A) prevent the attendance or testimony of any person in an official proceeding;

(B) prevent the production of a record, document, or other object, in an official proceeding; or

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—

(A) influence, delay, or prevent the testimony of any person in an official proceeding;

(B) cause or induce any person to—

(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(3) The punishment for an offense under this subsection is—

(A) in the case of a killing, the punishment provided in sections 1111 and 1112;

(B) in the case of—

(i) an attempt to murder; or

(ii) the use or attempted use of physical force against any person;

imprisonment for not more than 30 years; and

(C) in the case of the threat of use of physical force against any person, imprisonment for not more than 20 years.

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to—

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation¹ supervised release,¹ parole, or release pending judicial proceedings;

shall be fined under this title or imprisoned not more than 20 years, or both.

(c) Whoever corruptly—

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation¹ supervised release,¹ parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than 3 years, or both.

(e) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(f) For the purposes of this section—

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance—

¹ So in original.

Pub. L. 103-322, § 320101(d)(2), inserted “the assault involved in the use of a dangerous weapon, or” after “and if”.

Pub. L. 103-322, §§ 320101(d)(1), 330016(1)(K), amended subsec. (e) identically, substituting “shall be fined under this title” for “shall be fined not more than \$5,000” after “subsection (a) of this section”.

1988—Subsec. (a). Pub. L. 100-690 inserted a comma after “section 3056 of this title”.

1986—Subsec. (a). Pub. L. 99-646, § 62(1), inserted “a major Presidential or Vice Presidential candidate (as defined in section 3056 of this title)”.

Subsec. (h). Pub. L. 99-646, § 62(2), substituted “individual” for “official”.

1982—Pub. L. 97-285, § 2(a), substituted “Congressional, Cabinet, and Supreme Court assassination, kidnaping, and assault; penalties” for “Congressional assassination, kidnaping, and assault” in section catchline.

Subsec. (a). Pub. L. 97-285, § 1(a), expanded coverage of subsec. (a) to cover the killing of any individual who is a member of the executive branch of the Government and the head, or a person nominated to be head during the pendency of such nomination, of a department listed in section 101 of title 5 or the second ranking official in such department, the Director (or a person nominated to be Director during the pendency of such nomination) or Deputy Director of Central Intelligence, or a Justice of the United States, as defined in section 451 of title 28, or a person nominated to be a Justice of the United States, during the pendency of such nomination.

Subsecs. (h), (i). Pub. L. 97-285, § 1(b), added subsecs. (h) and (i).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104-294, set out as a note under section 13 of this title.

REPORT TO MEMBER OF CONGRESS ON INVESTIGATION CONDUCTED SUBSEQUENT TO THREAT ON MEMBER'S LIFE

Pub. L. 95-624, § 19, Nov. 9, 1978, 92 Stat. 3466, provided that: “The Federal Bureau of Investigation shall provide a written report to a Member of Congress on any investigation conducted based on a threat on the Member's life under section 351 of title 18 of the United States Code.”

CHAPTER 19—CONSPIRACY

Sec.	
371.	Conspiracy to commit offense or to defraud United States.
372.	Conspiracy to impede or injure officer.
373.	Solicitation to commit a crime of violence.

AMENDMENTS

1984—Pub. L. 98-473, title II, § 1003(b), Oct. 12, 1984, 98 Stat. 2138, added item 373.

§ 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

(June 25, 1948, ch. 645, 62 Stat. 701; Pub. L. 103-322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 88, 294 (Mar. 4, 1909, ch. 321, § 37, 35 Stat. 1096; Mar. 4, 1909, ch. 321, § 178a, as added Sept. 27, 1944, ch. 425, 58 Stat. 752).

This section consolidates said sections 88 and 294 of title 18, U.S.C., 1940 ed.

To reflect the construction placed upon said section 88 by the courts the words “or any agency thereof” were inserted. (See *Haas v. Henkel*, 1909, 30 S. Ct. 249, 216 U. S. 462, 54 L. Ed. 569, 17 Ann. Cas. 1112, where court said: “The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful functions of any department of government.” Also, see *United States v. Walter*, 1923, 44 S. Ct. 10, 263 U. S. 15, 68 L. Ed. 137, and definitions of department and agency in section 6 of this title.)

The punishment provision is completely rewritten to increase the penalty from 2 years to 5 years except where the object of the conspiracy is a misdemeanor. If the object is a misdemeanor, the maximum imprisonment for a conspiracy to commit that offense, under the revised section, cannot exceed 1 year.

The injustice of permitting a felony punishment on conviction for conspiracy to commit a misdemeanor is described by the late Hon. Grover M. Moscovitz, United States district judge for the eastern district of New York, in an address delivered March 14, 1944, before the section on Federal Practice of the New York Bar Association, reported in 3 Federal Rules Decisions, pages 380-392.

Hon. John Paul, United States district judge for the western district of Virginia, in a letter addressed to Congressman Eugene J. Keogh dated January 27, 1944, stresses the inadequacy of the 2-year sentence prescribed by existing law in cases where the object of the conspiracy is the commission of a very serious offense.

The punishment provision of said section 294 of title 18 was considered for inclusion in this revised section. It provided the same penalties for conspiracy to violate the provisions of certain counterfeiting laws, as are applicable in the case of conviction for the specific violations. Such a punishment would seem as desirable for all conspiracies as for such offenses as counterfeiting and transporting stolen property in interstate commerce.

A multiplicity of unnecessary enactments inevitably leads to confusion and disregard of law. (See reviser's note under section 493 of this title.)

Since consolidation was highly desirable and because of the strong objections of prosecutors to the general application of the punishment provision of said section 294, the revised section represents the best compromise that could be devised between sharply conflicting views.

A number of special conspiracy provisions, relating to specific offenses, which were contained in various sections incorporated in this title, were omitted because adequately covered by this section. A few exceptions were made, (1) where the conspiracy would constitute the only offense, or (2) where the punishment provided in this section would not be commensurate with the gravity of the offense. Special conspiracy provisions were retained in sections 241, 286, 372, 757, 794, 956, 1201, 2271, 2384 and 2388 of this title. Special conspiracy provisions were added to sections 2153 and 2154 of this title.

AMENDMENTS

1994—Pub. L. 103-322 substituted “fined under this title” for “fined not more than \$10,000”.

§ 372. Conspiracy to impede or injure officer

If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from

discharging any duties thereof, or to induce by like means any officer of the United States to leave the place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined under this title or imprisoned not more than six years, or both.

(June 25, 1948, ch. 645, 62 Stat. 701; Pub. L. 107-273, div. B, title IV, §4002(d)(1)(D), Nov. 2, 2002, 116 Stat. 1809.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §54 (Mar. 4, 1909, ch. 321, §21, 35 Stat. 1092).

Scope of section was enlarged to cover all possessions of the United States. When the section was first enacted in 1861 there were no possessions, and hence the use of the words "State or Territory" was sufficient to describe the area then subject to the jurisdiction of the United States. The word "District" was inserted by the codifiers of the 1909 Criminal Code.

AMENDMENTS

2002—Pub. L. 107-273 substituted "under this title" for "not more than \$5,000".

§ 373. Solicitation to commit a crime of violence

(a) Whoever, with intent that another person engage in conduct constituting a felony that has as an element the use, attempted use, or threatened use of physical force against property or against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, solicits, commands, induces, or otherwise endeavors to persuade such other person to engage in such conduct, shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half of the maximum fine prescribed for the punishment of the crime solicited, or both; or if the crime solicited is punishable by life imprisonment or death, shall be imprisoned for not more than twenty years.

(b) It is an affirmative defense to a prosecution under this section that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited. A renunciation is not "voluntary and complete" if it is motivated in whole or in part by a decision to postpone the commission of the crime until another time or to substitute another victim or another but similar objective. If the defendant raises the affirmative defense at trial, the defendant has the burden of proving the defense by a preponderance of the evidence.

(c) It is not a defense to a prosecution under this section that the person solicited could not be convicted of the crime because he lacked the state of mind required for its commission, because he was incompetent or irresponsible, or because he is immune from prosecution or is not subject to prosecution.

(Added Pub. L. 98-473, title II, §1003(a), Oct. 12, 1984, 98 Stat. 2138; amended Pub. L. 99-646, §26,

Nov. 10, 1986, 100 Stat. 3597; Pub. L. 103-322, title XXXIII, §330016(2)(A), Sept. 13, 1994, 108 Stat. 2148.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322 inserted "(notwithstanding section 3571)" before "fined not more than one-half".

1986—Subsec. (a). Pub. L. 99-646 substituted "property or against the person of another" for "the person or property of another" and inserted "life imprisonment or" before "death".

CHAPTER 21—CONTEMPTS

Sec.

- | | |
|------|---|
| 401. | Power of court. |
| 402. | Contempts constituting crimes. |
| 403. | Protection of the privacy of child victims and child witnesses. |

AMENDMENTS

1990—Pub. L. 101-647, title II, §225(b)(2), Nov. 29, 1990, 104 Stat. 4806, added item 403.

1949—Act May 24, 1949, ch. 139, §8(a), (b), 63 Stat. 90, struck out "CONSTITUTING CRIMES" in chapter heading and substituted "Contempts constituting crimes" for "Criminal contempts" in item 402.

§ 401. Power of court

A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(June 25, 1948, ch. 645, 62 Stat. 701; Pub. L. 107-273, div. B, title III, §3002(a)(1), Nov. 2, 2002, 116 Stat. 1805.)

HISTORICAL AND REVISION NOTES

Based on section 385 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, §268, 36 Stat. 1163).

Said section 385 conferred two powers. The first part authorizing courts of the United States to impose and administer oaths will remain in title 28, U.S.C., 1940 ed., Judicial Code and Judiciary. The second part relating to contempt of court constitutes this section.

Changes in phraseology and arrangement were made.

AMENDMENTS

2002—Pub. L. 107-273 inserted "or both," after "fine or imprisonment," in introductory provisions.

§ 402. Contempts constituting crimes

Any person, corporation or association willfully disobeying any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden, if the act or thing so done be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed, shall be prosecuted for such contempt as provided in section 3691 of this title and shall be punished by a fine under this title or imprisonment, or both.

Attachment ‘M’

Germany International Extradition Treaty with the United States

EXTRADITION TREATY WITH THE FEDERAL REPUBLIC OF
GERMANY

June 20, 1978, Date-Signed

August 29, 1980, Date-In-Force

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

96TH CONGRESS

SENATE

THE WHITE HOUSE, January 19, 1979.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty on Extradition Between the United States of America and the Federal Republic of Germany, signed at Bonn on June 20, 1978.

I transmit also, for the information of the Senate, the report of the Department of State with respect to the treaty.

The treaty is one of a series of modern extradition treaties being negotiated by the United States. It expands the list of extraditable offenses to include aircraft hijacking and narcotics offenses, as well as several other offenses not now covered by our existing Extradition Treaty with the Federal Republic of Germany. Upon entry into force, it will terminate and supersede the existing Extradition Treaty between the United States and the Federal Republic of Germany.

This treaty will make a significant contribution to international cooperation in law enforcement. I recommend that the Senate give early and favorable consideration to the treaty and give its advice and consent to ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,

Washington, D.C., October 16, 1978.

THE PRESIDENT,

The White House.

I have the honor to submit to you the Extradition Treaty Between the United States of America and the Federal Republic of Germany (FRG), signed at Bonn on June 20, 1978. I recommended that the treaty be transmitted to the Senate for its advice and consent to ratification.

This treaty follows generally the form and content of extradition treaties recently concluded by this Government. The treaty provides for the extradition of fugitives who have been charged with any of the thirty-three offenses listed in the schedule annexed to the treaty. The most significant newly listed offenses, which are not listed in our existing treaty with the FRG, are those relating to narcotics, including psychotropic and other dangerous drugs, and those relating to aircraft hijacking.

Article 1 includes a new jurisdictional provision which allows for extradition where the offense has been committed outside the territory of the requesting state by a national of the requesting state. This provision is regarded by the FRG as an important new element in the effort to combat acts of terrorism.

Crimes committed outside the territory of the requesting state may also provide the basis for extradition if the offense so committed would also be punishable under the law of the requested State in similar circumstances. It is anticipated that this provision would be useful in the area of narcotic and counterfeiting violations. Similar provisions are contained in the treaties on extradition with Spain and Norway.

Another important addition to this treaty is a provision in Article 2 which includes as extraditable offenses those which are Federal offenses and punishable by imprisonment for a maximum period exceeding one year in both countries. Article 2 also authorizes extradition under certain conditions for an attempt to commit or a conspiracy to commit any extraditable offense. Article 2 permits as well the Government of the United States to request the extradition of a person for any extraditable offense when United States Federal jurisdiction is based upon the use of the mails or other means of interstate communication or transport.

Article 3 defines the territorial application of the treaty. In addition to the

normal content of that concept, territorial jurisdiction includes aircraft in flight. This provision extends jurisdiction to acts of aircraft piracy, whether or not they occur over the territory of either of the parties.

Article 4, which contains the political offense exception clause, includes a provision excluding from the category of political offenses those offenses which a party has an obligation to prosecute by reason of a multilateral international agreement. This clause, which is a variant of that found in some recent extradition agreements, is intended to limit the scope of the political offense exception. This exception has been used in the past by certain governments to refuse the extradition of United States hijackers.

Article 7, which is similar to the provisions dealing with the extradition of nationals in some of our recently signed extradition treaties, grants the executive the discretionary power to extradite its own nationals. If extradition is denied on the basis of nationality, the requested state undertakes to submit the matter to its own prosecuting authorities if they have appropriate jurisdiction. The article thus takes into account the law of the FRG prohibiting the extradition of its nationals but allowing for their prosecution in the FRG.

Article 8 contains a prior jeopardy provision, which excludes extradition in cases where the person requested has been tried and discharged or punished by competent authorities of the requested state for the same offense.

Article 12 permits refusal of extradition unless assurances are received that the death penalty will not be imposed for an offense not punishable by death in the country from which extradition is requested. A similar article has been included in several recent treaties.

Articles 14-30 outline the procedures by which extradition shall be accomplished. Article 30 provides that expenses arising from the transportation of the person sought will be borne by the requesting state. This article also provides that the requested state shall provide for representation of the interests of the requesting state before the competent authorities of the requested state. This requirement has been included in recent extradition treaties the United States has negotiated because the costs of presentation are a hinderance to the making of extradition requests. This article differs from 18 U.S.C. 3195, which otherwise requires that all costs or expenses incurred in extradition proceedings be paid by the requesting authority.

Article 31 provides that the treaty is retroactive in effect as to extraditable offenses committed before the date of entry into force and which were punishable by both parties when committed.

Article 33 contains a Berlin clause which indicates the manner in which the provisions of this treaty may be applied to Berlin.

Upon entry into force, this treaty will terminate the 1930 Extradition Treaty as between the United States and the Federal Republic of Germany.

The Department of Justice joins the Department of State in favoring the ratification of this treaty at an early date.

Respectfully submitted,

WARREN CHRISTOPHER.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND
THE FEDERAL REPUBLIC OF GERMANY CONCERNING
EXTRADITION

The United States of America and the Federal Republic of Germany, desiring to provide for more effective cooperation between the two States in the repression of crime and, specifically, newly to regulate and thereby to facilitate the relations between the two States in the area of extradition-
-have agreed as follows:

Article 1

OBLIGATION TO EXTRADITE

(1) The Contracting Parties agree to extradite to each other subject to the provisions described in this Treaty persons found in the territory of one of the Contracting Parties who have been charged with an offense or are wanted by the other Contracting Party for the enforcement of a judicially pronounced penalty or detention order for an offense committed within the territory of the Requesting State.

(2) When the offense has been committed outside the territory of the Requesting State, the Requested State shall grant extradition subject to the provisions described in this Treaty if either

(a) its laws would provide for the punishment of such an offense committed in similar circumstances, or

(b) the person whose extradition is requested is a national of the Requesting State.

Article 2

EXTRADITABLE OFFENSES

(1) Extraditable offenses under this Treaty are:

(a) Offenses described in the Appendix to this Treaty which are punishable under the laws of both Contracting Parties;

(b) Offenses, whether listed in the Appendix to this Treaty or not, provided they are punishable under the Federal laws of the United States and the laws of the Federal Republic of Germany. In this connection it shall not matter whether or not the laws of the Contracting Parties place the offense within the same category of offenses or denominate an offense by the same terminology.

(2) Extradition shall be granted in respect of an extraditable offense:

(a) For prosecution, if the offense is punishable under the laws of both Contracting Parties by deprivation of liberty for a maximum period exceeding one year, or

(b) For the enforcement of a penalty or a detention order, if the duration of the penalty or detention order still to be served, or when, in the aggregate, several such penalties or detention orders still to be served, amount to at least six months.

(3) Subject to the conditions set out in paragraphs (1) and (2), extradition shall also be granted:

(a) For attempts to commit, conspiracy to commit, or participation in, an extraditable offense;

(b) For any extraditable offense when, only for the purpose of granting jurisdiction to the United States Government, transportation, transmission of persons or property, the use of the mails or other means of communication or use of other means of carrying out interstate or foreign commerce is also an element of the specific offense.

(4) When extradition has been granted in respect of an extraditable offense, it shall also be granted in respect of any other extraditable offense which would otherwise not be extraditable only by reason of the operation of paragraph (2).

Article 3

TERRITORIAL APPLICATION

(1) A reference in this Treaty to the territory of a Contracting Party is a reference to all territory under its jurisdiction.

(2) A reference in this Treaty to the territory of a Contracting Party shall furthermore include its territorial waters and airspace and vessels and aircraft registered with the competent authority of this Contracting Party if any such vessel is on the high seas or if any such aircraft is in flight when the offense is committed. For the purpose of this Treaty an aircraft shall be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation.

Article 4

POLITICAL OFFENSES

(1) Extradition shall not be granted if the offense in respect of which it is requested is regarded by the Requested State as a political offense, an offense of a political character or as an offense connected with such an offense.

(2) Extradition also shall not be granted if the Requested State has substantial grounds for believing that the request for extradition has, in fact, been made with a view to try or punish the person sought for an offense mentioned in paragraph (1).

(3) For the purpose of this Treaty the following offenses shall not be deemed to be offenses within the meaning of paragraph (1):

(a) A murder or other willful crime, punishable under the laws of both Contracting Parties by a penalty of at least one year, against the life or physical integrity of a Head of State or Head of Government of one of the Contracting Parties or of a member of his family, including attempts to commit such an offense, except in open combat;

(b) An offense which the Contracting Parties or the Requesting State have the obligation to prosecute by reason of a multilateral international agreement.

Article 5

MILITARY OFFENSES

Extradition shall not be granted if the offense in respect of which it is

requested is purely a military offense.

Article 6

FISCAL OFFENSES

If the competent executive authority of the Requested State determines that an offense for which extradition has been requested represents an offense as described in Item No. 27 of the Appendix to this Treaty and that extradition for such an offense would be contrary to the public policy or other essential interests of that State, extradition may be refused even though the offense also falls into one of the other categories of extraditable offenses under this Treaty.

Article 7

EXTRADITION OF NATIONALS

(1) Neither of the Contracting Parties shall be bound to extradite its own nationals. The competent executive authority of the Requested State, however, shall have the power to grant the extradition of its own nationals if, in its discretion, this is deemed proper to do and provided the law of the Requested State does not so preclude.

(2) The Requested State shall undertake all available legal measures to suspend naturalization proceedings in respect of the person sought until a decision on the request for his extradition and, if that request is granted, until his surrender.

(3) If the Requested State does not extradite its own national, it shall, at the request of the Requesting State, submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. If the Requested State requires additional documents or evidence, such documents or evidence shall be submitted without charge to that State. The Requesting State shall be informed of the result of its request.

Article 8

PRIOR JEOPARDY FOR SAME OFFENSE

Extradition shall not be granted when the person whose extradition is requested has been tried and discharged or punished with final and binding effect by the competent authorities of the Requested State for the offense for which his extradition is requested.

Article 9

LAPSE OF TIME

Extradition shall not be granted if at the time the Requested State receives the request for extradition the prosecution, or the enforcement of the penalty or of the detention order, has become barred by lapse of time under the law of the Requesting State.

Article 10

JURISDICTION OF THE REQUESTED STATE

(1) Extradition may be refused if the person sought is proceeded against in the Requested State for the offense for which extradition is requested.

(2) The fact that the competent authorities of the Requested State have decided not to prosecute the person sought for the offense for which extradition is requested or decided to discontinue any criminal proceedings which have been initiated shall not preclude extradition.

Article 11

COMPLAINT AND AUTHORIZATION

The obligation to extradite shall not be affected by the absence of any complaint or any authorization as a result of an offense if such complaint or such authorization is required under the law of the Requested State.

Article 12

CAPITAL PUNISHMENT

When the offense for which extradition is requested is punishable by death under the laws of the Requesting State and the laws of the Requested State do not permit such punishment for that offense, extradition may be refused unless the Requesting State furnishes such assurances as the Requested State considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be executed.

Article 13

EXTRAORDINARY COURTS

(1) An extradited person shall not be tried by an extraordinary court in the territory of the Requesting State.

(2) Extradition shall not be granted for the enforcement of a penalty imposed, or detention ordered, by an extraordinary court.

Article 14

CHANNEL OF COMMUNICATION; EXTRADITION DOCUMENTS

(1) The request for extradition, any subsequent documents and all other communications shall be transmitted through the diplomatic channel unless otherwise provided by this Treaty.

(2) The request shall be accompanied by:

(a) All available information concerning the identity and nationality of the person sought;

(b) The text of all applicable provisions of law of the Requesting State concerning the definition of the offense, its punishment and the limitation of legal proceedings or the enforcement of penalties; and

(c) A statement by a competent authority describing the measure taken, if any, that have interrupted the period of limitation under the law of the Requesting State.

(3) A request for the extradition of a person sought for the purpose of prosecution shall be accompanied, in addition to the documents provided for in paragraph (2), by:

(a) A warrant of arrest issued by a judge of the Requesting State and such evidence as, according to the law of the Requested State, would justify his arrest and committal for trial if the offense had been committed there, including evidence proving that the person requested is the person to whom the warrant of arrest refers; and

(b) A summary statement of the facts of the case unless they appear from the warrant of arrest.

(4) A request for the extradition of a person sought by reason of a judgment of guilt for the imposition or enforcement of a penalty or detention order shall be accompanied, in addition to the documents provided for in paragraph (2), by:

(a) If the judgment handed down in the territory of the Requesting State contains only a determination of guilt, this judgment, confirmation that the judgment has final and binding effect and a warrant of arrest issued by

a competent authority of the Requesting State;

(b) If the judgment handed down in the territory of the Requesting State contains the determination of guilt and the sentence imposed, a copy of this judgment of conviction as well as the confirmation that this judgment has final and binding effect and is enforceable and a statement of the portion of the sentence that has not been served.

(5) A witness' statement taken down in writing or other evidence, not under oath, shall be admitted in evidence as a statement made or evidence given under oath if it is certified that the person making the statement or giving the evidence was warned by a competent authority that any false, misleading or incomplete declaration would render him liable to punishment.

Article 15

ADDITIONAL EVIDENCE

(1) If the Requested State considers that the evidence furnished in support of the request for the extradition of a person sought is not sufficient to fulfill the requirements of this Treaty, that State shall request the submission of necessary additional evidence; it may fix a time limit for the submission of such evidence and, upon the Requesting State's application, for which reasons shall be given, may grant a reasonable extension of the time limit.

(2) If the person sought is under arrest and the additional evidence or information submitted as aforesaid is not sufficient, or if such evidence or information is not received within the period specified by the Requested State, he shall be discharged from custody. However, such discharge shall not bar a subsequent request in respect of the same offense. In this connection it shall be sufficient if reference is made in the subsequent request to the supporting documents already submitted provided these documents will be available at the extradition proceedings on this subsequent request.

Article 16

PROVISIONAL ARREST

(1) In case of urgency either Contracting Party may apply for the provisional arrest of the person sought before the request for extradition has been submitted to the Requested State through the diplomatic channel. The request for provisional arrest may be made either through the diplomatic channel or directly between the United States Department

of Justice and the Minister of Justice of the Federal Republic of Germany.

(2) The application for provisional arrest shall state that a warrant of arrest as mentioned in paragraph (3)(a) of Article 14, or a judgment as mentioned in paragraph (4) (a) or (b) of Article 14, exists and that it is intended to make a request for extradition. It shall also state the offense for which extradition will be requested and when and where such offense was committed and shall give all available information concerning the description of the person sought and his nationality. The application shall also contain such further information, if any, as would be necessary to justify the issuance of a warrant of arrest in the Requested State had the offense been committed, or the person sought been convicted, in that State.

(3) On receipt of an application for provisional arrest the Requested State shall take the necessary steps to secure the arrest of the person sought.

(4) Provisional arrest shall be terminated if, within a period of 40 days after the apprehension of the person sought, the Requested State has not received the request for extradition and the documents mentioned in Article 14. This period may be extended, upon the Requesting State's application, for up to an additional 20 days after the apprehension of the person sought.

(5) The termination of provisional arrest pursuant to paragraph (4) shall not prejudice the extradition of the person sought if the extradition request and the supporting documents mentioned in Article 14, insofar as they were not submitted in a timely manner, are later delivered. In this connection, reference may be made to the extradition request and the supporting documents which have already been transmitted to the Requested State.

Article 17

REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

(1) A Contracting Party which has received concurrently requests for the extradition of the same person either for the same offense, or for different offenses, from the other Contracting Party and from a third State shall make its decision having regard to all the circumstances and especially the possibility of a subsequent re-extradition to another Requesting State, the relative seriousness and place of commission of the offenses, the nationality of the person sought and the provisions of any extradition agreements between the Requested State and the Requesting States.

(2) If the Requested State reaches a decision at the same time upon

extradition to one of the Requesting States and on re-extradition to another Requesting State, it shall communicate that decision on re-extradition to each of the Requesting States.

Article 18

SIMPLIFIED EXTRADITION

If the extradition of a person sought to the Requesting State is not obviously precluded by the laws of the Requested State and provided the person sought irrevocably agrees in writing to his extradition after personally being advised by a judge or competent magistrate of his rights to formal extradition proceedings and the protection afforded by them that he would lose, the Requested State may grant his extradition without a formal extradition proceeding having taken place. In this case Article 22(1) shall not be applicable.

Article 19

DECISION

(1) The Requested State shall promptly communicate to the Requesting State the decision on the request for extradition.

(2) The Requested State shall give the reasons for any complete or partial rejection of the request for extradition.

Article 20

DELAYED DECISION AND SURRENDER

The Requested State may, after a decision on the request has been rendered by a competent court, defer the surrender of the person whose extradition is requested, when that person is being proceeded against or is serving a sentence in the territory of the Requested State for a different offense, until the conclusion of the proceedings and the full execution of any punishment he may be or may have been awarded. In this case the Requested State shall advise the Requesting State.

Article 21

SURRENDER OF THE PERSON SOUGHT

(1) If the extradition has been granted, surrender of the person sought shall take place within such time as may be prescribed by the laws of the Requested State. If no time period for surrender is prescribed by the laws

of the Requested State, surrender shall take place within 30 days from the date on which the Requesting State has been notified that the extradition has been granted. The competent authorities of the Contracting Parties shall agree on the time and place of the surrender of the person sought.

(2) If the person sought is not removed from the territory of the Requested State within the time required under paragraph (1), he may be set at liberty. The Requested State may subsequently refuse to extradite the person sought for the same offense.

(3) If circumstances beyond its control prevent a Contracting Party from timely surrendering or taking delivery of the person to be extradited, it shall notify the other Contracting Party before the expiration of the time limit. In such a case the competent authorities of the Contracting Parties may agree upon a new date for the surrender.

Article 22

RULE OF SPECIALITY

(1) A person who has been extradited under this Treaty shall not be proceeded against, sentenced or detained with a view to carrying out a sentence or detention order for any offense committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases:

(a) When the State which extradited him consents thereto. A request for consent shall be submitted, accompanied by the documents mentioned in Article 14 and a record established by a judge or competent officer of the statement made by the extradited person in respect of the request for consent. If under the law of the Requesting State the issuance of a warrant of arrest for the offense for which extradition is sought is not possible, the request may instead be accompanied by a statement issued by a judge or competent officer establishing that the person sought is strongly suspected of having committed the offense.

(b) When such person, having had the opportunity to leave the territory of the State to which he has been surrendered, has not done so within 45 days of his final discharge or has returned to that territory after leaving it. A discharge under parole or probation without an order restricting the freedom of movement of the extradited person shall be deemed equivalent to a final discharge.

(2) The State to which the person has been extradited may, however, take any legal measures necessary under its law, in order to proceed in

absentia, to interrupt any lapse of time or to record a statement under paragraph (1)(a).

(3) If the offense for which the person sought was extradited is legally altered in the course of proceedings, he shall be prosecuted or sentenced provided the offense under its new legal description is:

(a) Based on the same set of facts contained in the extradition request and its supporting documents; and

(b) Punishable by the same maximum penalty as, or a lesser maximum penalty than, the offense for which he was extradited.

Article 23

RE-EXTRADITION TO A THIRD STATE

(1) Except as provided for in Article 22(1)(b), the Requesting State shall not, without the consent of the Requested State, re-extradite to a third State a person extradited to the Requesting State and sought by the said third State in respect of an offense committed prior to his surrender.

(2) A request for consent to re-extradition to a third State shall be accompanied by the documents supporting the request for extradition made by the third State, if the Requested State needs these documents for its decision. These documents shall conform to the documents mentioned in Article 14 of this Treaty.

Article 24

INFORMATION ON THE RESULT OF THE CRIMINAL PROCEEDINGS

The Requesting State shall upon demand inform the Requested State of the result of the criminal proceedings against the extradited person and send a copy of the final and binding decision to that State.

Article 25

SURRENDER OF PROPERTY

(1) To the extent permitted under the laws of the Requested State and subject to the rights of that State or of third parties, which shall be duly respected, all articles which may serve as evidence, or which have been acquired as a result of an offense, or have been obtained as consideration for such articles, and which at the time of the arrest are found in the

possession of the person sought or are discovered subsequently, shall be surrendered if extradition of the person sought is granted. Surrender of such articles shall be possible even without any special request and, if possible, at the same time that the person sought is surrendered.

(2) Subject to the conditions provided in paragraph (1), the articles mentioned therein shall be surrendered even if the person sought cannot be surrendered owing to his death or escape.

(3) The Requested State may condition the surrender of articles upon a satisfactory assurance from the Requesting State that the articles will be returned to the Requested State as soon as possible.

Article 26

TRANSIT

(1) Transit of a person who is the subject of extradition from a third State through the territory of a Contracting Party to the territory of the other Contracting Party shall be granted on submission of a request, provided that the offense concerned is an extraditable offense under Article 2 and that the Contracting Party requested to grant transit does not consider the offense to be one covered by Articles 4 or 5.

(2) Transit of a national of the Requested State may be refused if, in the opinion of that State, it is inadmissible under its law.

(3) Subject to the provisions of paragraph (4), the request for transit must be accompanied by a warrant of arrest issued by a judge or competent officer of the Requesting State and by a statement as mentioned in Article 14(3)(b).

(4) If air transport is used, the following provisions shall apply:

(a) When no intermediate stop is foreseen, the Contracting Party requesting transit shall notify the other Contracting Party, certify that one of the documents mentioned in Article 14, paragraph (3)(a) or paragraph (4) (a) or (b) exists, and state whether the person whose transit is being notified is a national of the Contracting Party over the territory of which the flight is to be made. In the case of an unscheduled landing such notification shall have the effect of a request for provisional arrest as provided for in Article 16; thereafter a formal request for transit shall be made.

(b) When an intermediate stop is planned, the Contracting Party requesting transit shall submit a formal request for transit.

Article 27

APPLICABLE LAW

Except where this Treaty otherwise provides, the law of the Requested State shall be applicable with respect to provisional arrest, extradition and transit.

Article 28

LANGUAGE TO BE USED

The documents transmitted in the application of this Treaty shall be in the language of the Requesting State accompanied by a certified translation into the language of the Requested State. The expense of translation shall be borne by the Requesting State.

Article 29

CERTIFICATION

A warrant of arrest and depositions or other evidence, given on oath or in a manner described in Article 14(5), and the judgment of conviction and of the sentence, if it has been passed, or certified copies of these documents, shall be admitted in evidence in the examination of the request for extradition when:

(a) In the case of a request emanating from the Federal Republic of Germany, they are signed by a judge or competent officer, are authenticated by the official seal of the Federal Minister of Justice and are certified by the competent diplomatic or consular officer of the United States in the Federal Republic of Germany, or

(b) In the case of a request emanating from the United States, they are signed by a judge or competent officer, are authenticated by the official seal of the Department of State and are certified by the competent diplomatic or consular officer of the Federal Republic of Germany in the United States.

Article 30

EXPENSES

Expenses arising from the transportation of a person sought to the Requesting State shall be borne by that State. No other pecuniary claim

arising from an extradition or a transit request shall be made by the Requested State against the Requesting State. The appropriate legal officers of the State in which the extradition proceedings take place shall, by all legal means within their power, assist the Requesting State before the competent judges and officers.

Article 31

SCOPE OF APPLICATION

This Treaty shall apply to offenses encompassed by Article 2 committed before as well as after the date this Treaty enters into force. Extradition shall not be granted, however, for an offense committed before this Treaty enters into force which was not an offense under the laws of both Contracting Parties at the time of its commission.

Article 32

DEFINITIONS

For the purpose of this Treaty, the term

(a) "Penalty" means deprivation of liberty as a result of a sentence upon conviction for an offense;

(b) "Detention order" means any order involving deprivation of liberty which has been made by a criminal court in addition to or instead of a penalty.

Article 33

BERLIN CLAUSE

(1) This Treaty shall also apply to Land Berlin provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months of the date of entry into force of this Treaty.

(2) Upon the application of this Treaty to Land Berlin, references in the Treaty to the Federal Republic of Germany or to the territory thereof shall be deemed also to be references to Land Berlin.

Article 34

RATIFICATION; COMING INTO FORCE; DENUNCIATION

(1) This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged in Washington, D.C., as soon as possible.

(2) This Treaty shall enter into force 30 days after the exchange of the instruments of ratification.

(3) Between the Contracting Parties this Treaty shall terminate and replace the Extradition Treaty between the United States of America and Germany signed at Berlin July 12, 1930.

(4) This Treaty shall continue in force until the expiration of one year from the date on which written notice of termination is given by one Contracting Party to the other.

DONE at Bonn this 20th day of June, 1978, in duplicate in the English and German languages, both texts being equally authentic.

For the United States of America:

For the Federal Republic of Germany.

PROTOCOL

At the time of signing this day of the Extradition Treaty between the United States of America and the Federal Republic of Germany the undersigned plenipotentiaries have agreed that Article 4(3)(b) of the Treaty and Item No. 20(b) of the Appendix thereto are to be interpreted as follows:

(1) With respect to the interpretation of Article 4(3)(b) the Contracting Parties mutually agree that at the time of the conclusion of the Treaty, this provision has reference, for example, to the Convention for the Suppression of Unlawful Seizure of Aircraft of December 16, 1970, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of September 23, 1971, and the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons including Diplomatic Agents of December 14, 1973.

(2) The Contracting Parties mutually agree to interpret Item No. 20(b) of the Appendix to the Treaty as meaning that the terms "jury service" and "ehrenamtlicher Richter" apply to persons who in the legal practice of both Contracting Parties have corresponding functions (in the United States of America: members of a jury; in the Federal Republic of Germany: members of a court who are not judges by profession).

DONE at Bonn this 20th day of June, 1978, in duplicate in the English

and German languages, both texts being equally authentic.

For the United States of America:

For the Federal Republic of Germany:

APPENDICES:

APPENDIX

1. Murder.
2. Manslaughter.
3. Aggravated wounding, injury, or assault, even when loss of life results; wounding or injuring with intent to cause grievous bodily harm.
4. Illegal abortion.
5. Kidnapping; abduction; false imprisonment; child-stealing.
6. Rape, indecent assault; incest; bigamy.
7. Unlawful sexual acts with or upon children under the age specified by the laws both of the Requesting and Requested States.
8. Procuration.
9. Libel.
10. Willful non-support or willful abandonment of a minor or other dependent person when by reason of such non-support or abandonment the life of that minor or other dependant person is or is likely to be endangered.
11. Robbery; larceny; burglary; embezzlement; extortion.
12. Malicious damage to property.
13. Fraud, including offenses against the laws relating to the unlawful obtaining of money, property or securities, to fiduciary relationships or to exploitation of minors.
14. Offenses against the laws relating to forgery, including the making of forged documents or records, whether official or private, or the uttering or fraudulent use of such documents or records.

15. Receiving, possessing, or transporting for personal benefit any money, valuable securities, or other property, knowing the same to have been unlawfully obtained.

16. Offenses relating to counterfeiting.

17. Perjury, including subornation of perjury; false statements, either written or oral, whether or not under oath, made to a judicial authority or to a government agency or office.

18. Arson.

19. Unlawful obstruction of juridical proceedings or proceedings before governmental bodies or interference with an investigation of a violation of a criminal statute, by influencing, bribing, impeding, threatening, or injuring by any means any officer of the court, juror, witness, or duly authorized criminal investigator.

20. (a) Unlawful abuse of official authority which results in bodily injury or deprivation of life, liberty or property of any person.

(b) Unlawful injury or intimidation in connection with, or interference with, voting or candidacy for public office, jury service, government employment, or the receipt or enjoyment of benefits provided by government agencies.

21. Facilitating or permitting the escape of a person from custody; prison mutiny.

22. Offenses against the laws relating to bribery.

23. Offenses against the laws relating to civil disorders.

24. Offenses against the laws relating to illegal gambling enterprises.

25. Any act willfully jeopardizing the safety of any person traveling upon a railway or in any aircraft or vessel or other means of transportation.

26. Piracy, by statute or by the law of nations; mutiny or revolt aboard an aircraft or vessel against the authority of the captain or commander of such aircraft or vessel; any seizure or exercise of control, by force or violence or threat of force or violence, of an aircraft or vessel.

27. (a) Offenses against the laws relating to importation, exportation or transit of goods, articles, or merchandise.

(b) Offenses relating to willful evasion of taxes and duties.

(c) Offenses against the laws relating to international transfers of funds.

28. Offenses against the bankruptcy laws.

29. Offenses against the laws relating to narcotic drugs, Cannabis sativa L., Hallucinogenic drugs, cocaine and its derivatives, and other dangerous drugs and chemicals.

30. Offenses against the laws relating to the illicit manufacture of or traffic in poisonous chemicals or substances injurious to health.

31. Offenses against the laws relating to firearms, ammunition, explosives, incendiary devices or nuclear materials.

32. Offenses against the laws relating to the sale or transportation or purchase of securities or commodities.

33. Any other act for which extradition may be granted in accordance with the laws of both Contracting Parties.