

LAW OFFICE  
Dexter K. Kaiama #4249  
Seven Waterfront Plaza  
500 Ala Moana Blvd., Suite 400  
Honolulu, Hawai'i 96813  
Telephone: 808-342-4028  
Fax: (808) 587-7880

Attorney for Defendant  
Kale Kepekaio Gumapac

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	)	NOTICE OF WRITTEN PROTEST AND
ARGENT SECURITIES INC., ASSET-	)	DEMAND COMMUNICATED WITH THE
BACKED PASS-THROUGH	)	U.S. PACIFIC COMMAND;
CERTIFICATES, SERIES 2006-W2,	)	DECLARATION OF COUNSEL;
	)	EXHIBITS "1" & "2"; CERTIFICATE OF
Plaintiff,	)	SERVICE
	)	
vs.	)	
	)	
DIANNE DEE GUMAPAC; KALE	)	
KEPEKAIO GUMAPAC; JOHN DOES 1-	)	
50; AND JANE DOES 1-50,	)	
	)	
Defendants.	)	
_____	)	

NOTICE OF WRITTEN PROTEST AND DEMAND  
COMMUNICATED WITH THE U.S. PACIFIC COMMAND

Notice is hereby given that Defendant Kale Kepekaio Gumapac, by his attorney, pursuant to Sections 459(b) & 502(c), U.S. Department of the Army Field Manual 27-10 (Exhibit "1"), Hague Convention, IV, *Respecting the Laws and Customs of War on Land*, 18 October 1907 (36 U.S. Stat. 2227); Geneva Convention, IV, *Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949 (6 U.S.T. 3516, T.I.A.S No. 3365, 75 U.N.T.S. 287); and Title 18

U.S.C. §2441(c)(1)—Definition of War Crime, communicated a written Protest and Demand for Compensation and/or Punishment for War Crimes Committed by the Honorable Judge Greg K. Nakamura with the U.S. Pacific Command on July 6, 2012, without exhibits, and attached hereto as Exhibit “2”.

DATED: Honolulu, Hawai’i, July \_\_\_\_, 2012.

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Dexter K. Kaiama  
Attorney for Defendant  
Kale Kepekaio Gumapac

# **Exhibit “1”**

# **FM 27-10**

**DEPARTMENT OF THE ARMY FIELD MANUAL**

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## **THE LAW OF LAND WARFARE**

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**DEPARTMENT OF THE ARMY • JULY 1956**

# CHAPTER 8

## REMEDIES FOR VIOLATION OF INTERNATIONAL LAW; WAR CRIMES

### Section I. REMEDIES AND REPRISALS

#### 495. Remedies of Injured Belligerent

In the event of violation of the law of war, the injured party may legally resort to remedial action of the following types:

*a.* Publication of the facts, with a view to influencing public opinion against the offending belligerent.

*b.* Protest and demand for compensation and/or punishment of the individual offenders. Such communications may be sent through the protecting power, a humanitarian organization performing the duties of a protecting power, or a neutral state, or by parlementaire direct to the commander of the offending forces. Article 3, H. IV, provides in this respect:

**A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.**

*c.* Solicitation of the good offices, mediation, or intervention of neutral States for the purpose of making the enemy observe the law of war. See Articles 11, *GWS*; 11, *GWS Sea*; 11, *GPW*; 12, *GC* (par. 19), concerning conciliation procedure through the protecting powers.

*d.* Punishment of captured offenders as war criminals.

*e.* Reprisals.

#### 496. Inquiry Concerning Violations of Geneva Conventions of 1949

*GWS*, *GWS Sea*, *GPW*, and *GC* contain a common provision that—

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay. (*GWS*, art. 52; *GWS Sea*, art. 53; *GPW*, art. 132; *GC*, art. 149.)

#### 497. Reprisals

*a. Definition.* Reprisals are acts of retaliation in the form of conduct which would otherwise be unlawful, resorted to by one belligerent against enemy personnel or property for acts of warfare committed by the other belligerent in violation of the law of war, for the purpose of enforcing future compliance with the recognized rules of civilized warfare. For example, the employment by a belligerent of a weapon the use of which is normally precluded by the law of war would constitute a lawful reprisal for intentional mistreatment of prisoners of war held by the enemy.

*b. Priority of Other Remedies.* Other means of securing compliance with the law of war should normally be exhausted before resort is had to reprisals. This course should be pursued unless the safety of the troops requires immediate drastic action and the persons who actually committed the offenses cannot be secured. Even when appeal to the enemy for redress has failed, it may be a matter of policy to consider, before resorting to reprisals, whether the opposing forces are not more likely to be influenced by a steady adherence to the law of war on the part of their adversary.

*c. Against Whom Permitted.* Reprisals against the persons or property of prisoners of war, including the wounded and sick, and protected civilians are forbidden (*GPW*, art. 13; *GC*, art. 33). Collective penalties and punishment of prisoners of war and protected civilians are likewise prohibited (*GPW*, art. 87;

GC, art. 99). However, reprisals may still be visited on enemy troops who have not yet fallen into the hands of the forces making the reprisals.

*d. When and How Employed.* Reprisals are never adopted merely for revenge, but only as an unavoidable last resort to induce the enemy to desist from unlawful practices. They should never be employed by individual soldiers except by direct orders of a commander, and the latter should give such orders only after careful inquiry into the alleged offense. The highest accessible military authority should be consulted unless immediate action is demanded, in which event a subordinate commander may order appropriate reprisals upon his own initiative. Ill-considered action may subsequently be found to have been wholly unjustified and will subject the responsible officer himself to punishment for a violation of the law of war. On the other hand, commanding officers must assume responsibility for retaliative measures when an unscrupulous enemy leaves no other recourse against the repetition of unlawful acts.

*e. Form of Reprisal.* The acts resorted to by way of reprisal need not conform to those complained of by the injured party, but should not be excessive or exceed the degree of violence committed by the enemy.

*f. Procedure.* The rule requiring careful inquiry into the real occurrence will always be followed unless the safety of the troops requires immediate drastic action and the persons who actually committed the offense cannot be ascertained.

*g. Hostages.* The taking of hostages is forbidden (GC, art. 34). The taking of prisoners by way of reprisal for acts previously committed (so-called "reprisal prisoners") is likewise forbidden. (See GC, art. 33.)

## **Section II. CRIMES UNDER INTERNATIONAL LAW**

### **498. Crimes Under International Law**

Any person, whether a member of the armed forces or a civilian, who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment. Such offenses in connection with war comprise:

- a. Crimes against peace.
- b. Crimes against humanity.
- c. War crimes.

Although this manual recognizes the criminal responsibility of individuals for those offenses which may comprise any of the foregoing types of crimes, members of the armed forces will normally be concerned, only with those offenses constituting "war crimes."

### **499. War Crimes**

The term "war crime" is the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime.

### **500. Conspiracy, Incitement, Attempts, and Complicity**

Conspiracy, direct incitement, and attempts to commit, as well as complicity in the commission of, crimes against peace, crimes against humanity, and war crimes are punishable.

### **501. Responsibility for Acts of Subordinates**

In some cases, military commanders may be responsible for war crimes committed by subordinate members of the armed forces, or other persons subject to their control. Thus, for instance, when troops commit massacres and atrocities against the civilian population of occupied territory or against prisoners of war, the responsibility may rest not only with the actual perpetrators but also with the commander. Such a responsibility arises directly when the acts in question have been committed in pursuance of an order of the commander concerned. The commander is also responsible if he has actual knowledge, or should have knowledge, through reports received by him or through other means, that troops or other persons subject to his control are about to commit or have committed a war crime and he fails to take the necessary and reasonable steps to insure compliance with the law of war or to punish violators thereof.

## 502. Grave Breaches of the Geneva Conventions of 1949 as War Crimes

The Geneva Conventions of 1949 define the following acts as “grave breaches,” if committed against persons or property protected by the Conventions:

*a. GWS and GWS Sea.*

**Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. (GWS, art. 50; GWS Sea, art. 51.)**

*b. GPW.*

**Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or willfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention. (GPW, art. 130.)**

*c. GC.*

**Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments willfully causing great suffering or serious injury to body or health, 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, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. (GC, art. 147.)**

## 503. Responsibilities of the Contracting Parties

**No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article. (GWS, art. 51; GWS Sea, art. 52; GPW, art. 131; GC, art. 148.)**

## 504. Other Types of War Crimes

In addition to the “grave breaches” of the Geneva Conventions of 1949, the following acts are representative of violations of the law of war (“war crimes”):

- a.* Making use of poisoned or otherwise forbidden arms or ammunition.
- b.* Treacherous request for quarter.
- c.* Maltreatment of dead bodies.
- d.* Firing on localities which are undefended and without military significance.
- e.* Abuse of or firing on the flag of truce.
- f.* Misuse of the Red Cross emblem.
- g.* Use of civilian clothing by troops to conceal their military character during battle.
- h.* Improper use of privileged buildings for military purposes.
- i.* Poisoning of wells or streams.
- j.* Pillage or purposeless destruction.
- k.* Compelling prisoners of war to perform prohibited labor.
- l.* Killing without trial spies or other persons who have committed hostile acts.
- m.* Compelling civilians to perform prohibited labor.
- n.* Violation of surrender terms.

## Section III. PUNISHMENT OF WAR CRIMES

## 505. Trials

*a. Nature of Proceeding.* Any person charged with a war crime has the right to a fair trial on the facts and law.

*b. Rights of Accused.* Persons accused of “grave breaches” of the Geneva Conventions of 1949 are to be tried under conditions no less favorable than those provided by Article 105 and those following (par. 181 and following) of *GPW* (*GWS*, art. 49; *GWS Sea*, art. 50; *GPW*, art. 129; *GC*, art. 146, 4th par. only; par. 506 herein.)

*c. Rights of Prisoners of War.* Pursuant to Article 85, *GPW* (par. 161), prisoners of war accused of war crimes benefit from the provisions of *GPW*, especially Articles 82-108 (paras. 158-184).

*d. How Jurisdiction Exercised.* War crimes are within the jurisdiction of general courts-martial (UCMJ, Art. 18), military commissions, provost courts, military government courts, and other military tribunals (UCMJ, Art. 21) of the United States, as well as of inter-national tribunals.

*e. Law Applied.* As the international law of war is part of the law of the land in the United States, enemy personnel charged with war crimes are tried directly under international law without recourse to the statutes of the United States. However, directives declaratory of international law may be promulgated to assist such tribunals in the performance of their function. (See paras. 506 and 507.)

## 506. Suppression of War Crimes

*a. Geneva Conventions of 1949.* The Geneva Conventions of 1949 contain the following common undertakings:

**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.**

**Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and shall bring such persons, regardless of their nationality, before its own courts. It may also,**

**if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.**

**Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.**

**In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favorable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949. (*GWS*, art. 49; *GWS Sea*, art. 50; *GPW*, art. 129; *GC*, art. 146.)**

*b. Declaratory Character of Above Principles.* The principles quoted in a, above, are declaratory of the obligations of belligerents under customary international law to take measures for the punishment of war crimes committed by all persons, including members of a belligerent’s own armed forces.

*c. Grave Breaches.* “Grave breaches” of the Geneva Conventions of 1949 and other war crimes which are committed by enemy personnel or persons associated with the enemy are tried and punished by United States tribunals as violations of international law.

If committed by persons subject to United States military law, these “grave breaches” constitute acts punishable under the Uniform Code of Military Justice. Moreover, most of the acts designated as “grave breaches” are, if committed within the United States, violations of domestic law over which the civil courts can exercise jurisdiction.

## 507. Universality of Jurisdiction

*a. Victims of War Crimes.* The jurisdiction of United States military tribunals in connection with war crimes is not limited to offenses committed against nationals of the United States but extends also to all offenses of this nature committed against nationals of allies and of cobelligerents and stateless persons.



*b. Persons Charged With War Crimes.* The United States normally punishes war crimes as such only if they are committed by enemy nationals or by persons serving the interests of the enemy State. Violations of the law of war committed by persons subject to the military law of the United States will usually constitute violations of the Uniform Code of Military Justice and, if so, will be prosecuted under that Code. Violations of the law of war committed within the United States by other persons will usually constitute violations of federal or state criminal law and preferably will be prosecuted under such law (see paras. 505 and 506). Commanding officers of United States troops must insure that war crimes committed by members of their forces against enemy personnel are promptly and adequately punished.

#### **508. Penal Sanctions**

The punishment imposed for a violation of the law of war must be proportionate to the gravity of the offense. The death penalty may be imposed for grave breaches of the law. Corporal punishment is excluded. Punishments should be deterrent, and in imposing a sentence of imprisonment it is not necessary to take into consideration the end of the war, which does not of itself limit the imprisonment to be imposed.

### **Section IV. DEFENSES NOT AVAILABLE**

#### **509. Defense of Superior Orders**

*a.* The fact that the law of war has been violated pursuant to an order of a superior authority, whether military or civil, does not deprive the act in question of its character of a war crime, nor does it constitute a defense in the trial of an accused individual, unless he did not know and could not reasonably have been expected to know that the act ordered was unlawful. In all cases where the order is held not to constitute a defense to an allegation of war crime, the fact that the individual was acting pursuant to orders may be considered in mitigation of punishment.

*b.* In considering the question whether a superior order constitutes a valid defense, the court shall take into consideration the fact that obedience to lawful military orders is the duty of every member of the armed forces; that the latter cannot be expected, in conditions of war discipline, to weigh scrupulously the legal merits of the orders received; that certain rules of warfare may be controversial; or that an act otherwise amounting to a war crime may be done in obedience to orders conceived as a measure of reprisal. At the same time it must be borne in mind that members of the armed forces are bound to obey only lawful orders (e. g., UCMJ, Art. 92).

#### **510. Government Officials**

The fact that a person who committed an act which constitutes a war crime acted as the head of a State or as a responsible government official does not relieve him from responsibility for his act.

#### **511. Acts Not Punished in Domestic Law**

The fact that domestic law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

## **Exhibit “2”**

**LAW OFFICE OF  
DEXTER K. KAIAMA**

Seven Waterfront Plaza  
500 Ala Moana Blvd., Suite 400  
Honolulu, HI 96813

Tel. No. (808) 342-4028  
Fax No. (808) 587-7880

July 6, 2012

ADMIRAL SAMUEL J. LOCKLEAR III, USN  
HQ USPACOM  
Attn JOO  
Box 64028  
Camp H.M. Smith, HI 96861-4031

Re: VIOLATIONS OF INTERNATIONAL LAW: PROTEST AND DEMAND  
Alleged War Criminal: Judge Greg Nakamura  
War Crime Victim: Kale Kepekaio Gumapac

Dear ADMIRAL SAMUEL J. LOCKLEAR III, USN:

NOTICE REQUIRED BY SECTION 495(b), SECTION I—REMEDIES  
AND REPRISALS, CHAPTER 8—REMEDIES FOR VIOLATION OF  
INTERNATIONAL LAW; DEPARTMENT OF THE  
ARMY FIELD MANUAL 27-10

The following information is provided to you as required by 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; 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)—Definition of War Crime.

**Section 495 (FM 27-10). Remedies of Injured**

**Belligerent.** In the event of violation of the law of war, the injured party may legally resort to remedial action of the following types:

*a.* Publication of the facts, with a view to influencing public opinion against the offending belligerent.

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HQ USPACOM  
Attn JOO  
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Re: War Crime: Protest & Demand

b. Protest and demand for compensation and/or punishment of the individual offenders. Such communications may be sent through the protecting, a humanitarian organization performing the duties of a protecting power, or a neutral state, or by parlementaire direct to the commander of the offending forces. Article 3, [Hague Convention] IV, provides in this respect:

**A belligerent party which violates the provisions of the said Regulations, shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.**

...

**Section 502 (FM 27-10). Grave Breaches of the Geneva Conventions of 1949 as War Crimes.** The Geneva Conventions of 1949 define the following acts as “grave breaches,” if committed against persons or property protected by the Conventions:

c. *GC [Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949]*

***Grave breaches to which the preceding Article relates shall be those involving...willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention... (GC, art. 147.)***

Pursuant to the authorization and instructions of my client, I hereby provide notice that my client has been deprived of a fair and regular trial in ejection proceedings in the Circuit Court of the Third Circuit of the State of Hawai‘i. As a practicing attorney and officer of the court, I took an oath to support and defend the constitutions of the United States of America and State of Hawai‘i.

Under the *Supremacy clause* (Art. VI, clause 2, U.S. Const.), “all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.” According to the U.S. Supreme Court in *U.S. v. Belmont*, 301 U.S. 324 (1937),

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*U.S. v. Pink*, 315 U.S. 203 (1942), and *American Insurance Association v. Garamendi*, 539 U.S. 396, (2003), sole-executive agreements are treaties.

In the case of my client, as more fully set forth herein below, he raised jurisdictional arguments centered on two sole executive agreements entered into in 1893 between President Grover Cleveland, representing the United States of America, and Queen Lili'uokalani, representing the Hawaiian Kingdom. The first sole executive agreement, called the *Lili'uokalani assignment*, is a temporary and conditional assignment by the Queen of her executive power under threat of war, and binds the President and his successors in office to administer Hawaiian law.

The second sole executive agreement, called the *Agreement of restoration*, binds the President and his successors in office to restore the Hawaiian government, return the executive power to the Queen or her successor in office, and thereafter for the Queen or successor in office to grant amnesty to certain insurgents. The Congress politically prevented President Cleveland from using force to carry into effect these international agreements.

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. The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War. 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. 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.

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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.

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 (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, 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.

**Section 509 (FM 27-10). Defense of Superior Orders**

*a.* The fact that the law of war has been violated pursuant to an order of a superior authority, whether military or civil, does not deprive the act in question of its character of a war crime, nor does it constitute a defense in the trial of an accused individual, unless he did not know

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and could not reasonably have been expected to know that the act ordered was unlawful. In all cases where the order is held not to constitute a defense to an allegation of war crime, the fact that the individual was acting pursuant to orders may be considered in mitigation of punishment.

**Section 510 (FM 27-10). Government Officials**

The fact that a person who committed an act which constitutes a war crime acted as the head of a State or as a responsible government official does not relieve him from responsibility for his act.

As the Commander of the U.S. Pacific Command, your office is the direct extension of the United States President in the Hawaiian Islands through the Secretary of Defense. As the Hawaiian Kingdom continues to remain an independent and sovereign State, the *Lili'uokalani assignment* and Article 43 of the 1907 Hague Convention IV mandates your office to administer Hawaiian Kingdom law in accordance with international law and the laws of occupation. The violations of my client's right to a fair and regular trial are directly attributable to the President's failure, and by extension your office's failure, to comply with the *Lili'uokalani assignment* and Article 43 of the 1907 Hague Convention, IV, which makes this an international matter.

STATEMENT OF FACTS

My client is Kale Kepekaio Gumapac, a Hawaiian subject and protected person, whose residential property was non-judicially foreclosed on and ejection proceedings instituted in the District Court of the Third Circuit, Hilo, Island of Hawai'i (Civil No. 3RC11-1-000150, District Court of the Third Circuit, Puna Division, State of Hawai'i). My client purchased title insurance to protect the lender in the event there is a defect in title, which was a condition of the loan, but the lender disregarded the policy and proceeded against my client for eviction. The Honorable Judge Harry Freitas dismissed

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the complaint and granted my client's motion for dismissal because of a title issue created by the aforementioned *Lili 'uokalani assignment*. The bank re-filed an ejectment complaint in the Circuit Court of the Third Circuit, State of Hawai'i (Civil no. 3CC11-1-000590), wherein the Honorable Judge Greg K. Nakamura committed a war crime by willfully depriving my client, as a protected person, of a fair and regular trial prescribed by the Geneva Convention, IV. According to Section 499—War Crimes, Department of the Army Field Manual 27-10, "The term 'war crime' is the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime."

- On December 15, 2011, Deutsche Bank filed their Complaint Ejectment ("Plaintiff's Complaint") against my client.
- On January 13, 2011, my client filed a Motion to Dismiss Plaintiff's Complaint for Ejectment pursuant to Hawai'i Rules of Civil Procedure Rule 12(b)(1) because there is clear evidence that the court lacked subject matter jurisdiction.
- On February 14, 2012, my client's motion was heard before the Honorable Judge Nakamura, where he took judicial notice of the *Lili 'uokalani assignment* and the *Agreement of restoration*, being two sole executive agreements. Instead of dismissing Plaintiff's Complaint, Judge Nakamura denied my clients' HRCP 12(b)(1) Motion to Dismiss in violation of my clients' rights to be tried by a court of competent jurisdiction.

My client has been deprived of his right to a fair and regular trial by a court that does not have subject matter jurisdiction and stands in direct violation of the 1893 *Lili 'uokalani assignment & Agreement of restoration*, 1899 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law. An appropriate court with subject matter jurisdiction is an Article II Federal Court, which is a military court established by the President through executive order which would administer the civil and penal laws of



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the Hawaiian Kingdom under the international laws of occupation. However, the Circuit Court of the Third Circuit would have jurisdiction if your office established a military government that utilizes the infrastructure of the State of Hawai'i government to administer Hawaiian Kingdom law.

At present, the only war crime committed was the denial of my client's right to a fair and regular trial, but should Judge Nakamura sign the Order granting Summary Judgment and the Writ of Possession and my client is forcibly removed from his residence, a second war crime will be committed because private property cannot be confiscated. Article 46 of the 1907 Hague Convention, IV, states, "Family honour and rights, the lives of persons, and private property... must be respected. Private property cannot be confiscated." And Article 53 of the 1949 Geneva Question, IV, provides, "Any destruction by the Occupying Power of real or personal property belonging individually... to private persons... is prohibited."

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).

#### PROTEST AND DEMAND

In light of the aforementioned, I am formally lodging a protest and demand, on behalf of my clients, that your office:

Admiral Samuel J. Locklear III, USN  
HQ USPACOM  
Attn JOO  
July 6, 2012  
Re: War Crime: Protest & Demand

1. Comply with the 1893 *Lili 'uokalani assignment & Agreement of restoration*, 1899 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law;
2. Establish a military government, to include tribunals, to administer and enforce the civil and penal laws of the Hawaiian Kingdom pursuant to *Lili 'uokalani assignment* and Article 43 of the 1907 Hague Convention, IV;
3. Order the Honorable Judge Nakamura to cease and desist these proceedings against my client;
4. Compensate my client for War Crimes committed against him and *restitutio in integrum* of his property that was the subject of the ejectment proceedings.

Due to the large volume of pages, I'm attaching a CD that has PDF files of: (1) my client's Motion to Dismiss Plaintiff's Complaint for Ejectment; (2) Plaintiff's Opposition to the Motion to Dismiss; (3) my client's Reply to the Opposition; (4) transcripts of the hearing on my client's Motion to Dismiss wherein the Honorable Judge Nakamura took judicial notice of the *Lili 'uokalani assignment* and the *Agreement of restoration*; and (5) Order denying my client's Motion to Dismiss.

I am also providing PDF files of the doctoral dissertation of Dr. Keanu Sai who received his Ph.D. from the University of Hawai'i at Manoa in Political Science in 2008, and his law reviewed journal articles published at the University of Hawai'i at Manoa and the University of San Francisco School of Law regarding the prolonged occupation of the Hawaiian Kingdom. I respectfully direct your attention to Chapter 5, "Righting the Wrong," of Dr. Sai's dissertation, which provides a comprehensive plan for establishing a

Admiral Samuel J. Locklear III, USN  
HQ USPACOM  
Attn JOO  
July 6, 2012  
Re: War Crime: Protest & Demand


military government with the utilization of the current governmental infrastructure of the State of Hawai'i.

Dr. Sai served as lead agent for the *acting* government of the Hawaiian Kingdom in arbitral proceedings at the Permanent Court of Arbitration, The Hague, Netherlands, in *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566 (2001), and filed a complaint with the United Nations Security Council on July 5, 2001 regarding the prolonged occupation of the Hawaiian Kingdom. International law journal articles on the international arbitration and the Security Council complaint were published in the *American Journal of International Law*, (95 American Journal of International Law 927-933), and the *Chinese Journal of International Law*, (2(1) Chinese Journal of International Law 655-684).

Dr. Sai gave a presentation of the prolonged occupation of the Hawaiian Islands to the Officer's Corps of the 25<sup>th</sup> Infantry Division in 2001 at the invitation of Brigadier General James M. Dubik, Commander. Dr. Sai also gave a presentation on the prolonged occupation of the Hawaiian Islands to Colonel James Herring, Staff Judge Advocate for the Army's 8<sup>th</sup> Theater Sustainment Command, and his staff of officers at Wheeler Court House on February 25, 2009.

It is undisputedly clear that notice regarding the prolonged occupation of the Hawaiian Kingdom has been provided to this office. We now respectfully demand that your office comply with your military obligations and provide my client the relief he is entitled to under international law.

Sincerely,



Dexter K. Kaiama, Esq.

Admiral Samuel J. Locklear III, USN  
HQ USPACOM  
Attn JOO  
July 6, 2012  
Re: War Crime: Protest & Demand

Encls.

CC: BARRACK OBAMA, President  
The White House  
1600 Pennsylvania Ave., NW  
Washington, DC 20500

LEON PANETTA, Secretary of Defense  
U.S. Department of Defense  
1400 Defense Pentagon  
Washington, DC 20301-1400

PRESIDENT  
United Nations Security Council  
1st Avenue & E 44th Street  
New York, NY 10017

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PS Form 3800, August 2006

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