



Our reference: OTP-CR-206/13

The Hague, 24 June 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

David Keanu Sai
interior@hawaiiankingdom.org



Notre référence : OTP-CR-206/13

La Haye, le 24 juin 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

David Keanu Sai
interior@hawaiiankingdom.org

REFERRAL

11 June 2013

BY: THE HAWAIIAN KINGDOM,

which appoints as Agent for purposes of this Referral His Excellency David Keanu Sai, Ph.D., its Ambassador-at-large.

TO: MADAME PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT FOR WAR CRIMES COMMITTED WITHIN THE TERRITORY OF THE HAWAIIAN KINGDOM

I. PRELIMINARY STATEMENT

1. 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 12 August 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.
2. The UNITED STATES OF AMERICA disguised its occupation of the HAWAIIAN KINGDOM as if a treaty of cession annexed the Hawaiian Islands. **There is no treaty.** For the past one hundred twenty (120) 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 OF AMERICA. 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, hereinafter “HC IV,” the Fourth Geneva Convention 1949, hereinafter “GC IV,” and international law.
3. The first allegations of war crimes was made the subject of an arbitral dispute in *Lance Larsen vs. the Hawaiian Kingdom*¹ at the Permanent Court of Arbitration, The

¹ See *Lance Larsen v. Hawaiian Kingdom*, 119 Int’l L. Rep. 566 (2001), reprinted in 1 Haw. J. L. & Pol. 299 (Summer 2004); David Bederman & Kurt Hilbert, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii*, 95 Am. J. Int’l L. 927 (2001); Patrick Dumbery, *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, (2002).

Hague, Netherlands. Oral hearings were held at the Peace Palace, The Hague, on the 7, 8, and 11 December 2000.

4. On 5 July 2001, the HAWAIIAN KINGDOM filed a Complaint with the United Nations Security Council in New York as a State not a member of the United Nations pursuant to Article 35(2) of the United Nations Charter.² The Complaint was accepted by China who served as President of the Security Council.³
5. On 10 August 2012, the HAWAIIAN KINGDOM submitted a Protest and Demand with the President of the United Nations General Assembly in New York as a State not a member of the United Nations pursuant to Article 35(2) of the United Nations Charter. The Protest and Demand is incorporated herein with the Referral and will be referenced herein for informational and evidentiary purposes.
6. On 28 November 2012, the HAWAIIAN KINGDOM signed its Instrument of Accession to the GC IV, and deposited the same with the General Secretariat of the Swiss Federal Department of Foreign Affairs in Berne, Switzerland, on 14 January 2013. The GC IV took immediate effect on the aforementioned date of deposit in accordance with Article 157 of the said Convention.⁴
7. This referral along with its particulars are submitted to the Madame Prosecutor of the International Criminal Court, hereinafter “ICC”, by the HAWAIIAN KINGDOM, a State Party to the Rome Statute.
8. The HAWAIIAN KINGDOM therefore respectfully requests the Madame Prosecutor of the ICC to initiate an investigation pursuant to Articles 12, 13 and 14 of the Rome Statute to initiate an investigation into the crimes committed within the Court’s jurisdiction arising from this prolonged and illegal occupation. Taking into consideration the HAWAIIAN KINGDOM’s submission and for reasons hereinafter provided, the ICC has jurisdiction to consider these matters pursuant to Article 12(2)(a) of the Rome Statute.
9. The HAWAIIAN KINGDOM’s request also relies on the doctoral dissertation and law publications of our Ambassador-at-large, His Excellency David Keanu Sai, Ph.D.,

² See the Charter of the United Nations:

CHAPTER VI: PACIFIC SETTLEMENT OF DISPUTES
Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.
2. 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.
3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

³ See Dumberry, *supra* note 1, at 671-672.

⁴ See Hawaiian Instrument of Accession filed with the Swiss Foreign Ministry, 14 January 2013, attached as Exhibit “A.”

which covers the legal and political history of the HAWAIIAN KINGDOM and its continuity as a State to date.⁵

II. REFERRAL

10. On 28 November 2012, the HAWAIIAN KINGDOM signed its Instrument of Accession to the Rome Statute and deposited the same with the Secretary-General of the United Nations in New York City on 10 December 2012, whereby the ICC would begin jurisdiction over the Hawaiian Islands on 4 March 2013 in accordance with Article 126(2) of the Rome Statute.
10. The United States Pacific Command, hereinafter “PACOM”, is a Unified Combatant Command that was established on 1 January 1947 as an outgrowth of the World War II command structure for the Pacific Theater and is headquartered at Camp Smith on the Island of O‘ahu.⁶ The direct chain of command is from the President of the United States Barack Obama to the Secretary of Defense Chuck Hagel to the Commander of PACOM Admiral Samuel J. Locklear III, USN. The combat power of PACOM includes the U.S. Army Pacific commanded by Lt. Gen. Francis J. Wiercinski, Marine Force Pacific commanded by Lieutenant General Terry G. Robling, U.S. Pacific Fleet commanded by Admiral Cecil D. Haney, and Pacific Air Forces commanded by General Herbert J. Carlisle, which are all headquartered on the Island of O‘ahu.
11. On 31 May 2012 at PACOM headquarters at Camp Smith, U.S. Secretary of Defense Leon Panetta gave a speech to about 250 civilians and military service members representing the combat power of PACOM. “More than ever, Hawaii remains that key center for operations throughout the Asia-Pacific region,” Panetta said. “I really want you to know how important we think Hawaii is to the defense of the United States and, more importantly, for advancing peace and prosperity and security throughout the Asia-Pacific region.”⁷
12. As the highest ranking federal agency of the United States government in the Hawaiian Islands, the Commander of PACOM, as the theater commander, is responsible for the establishment of a military government for the administration of the penal and civil laws of the HAWAIIAN KINGDOM, being the laws of the occupied

⁵ David Keanu Sai (2008), *The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State* (Doctoral dissertation), attached as Exhibit “B”; David Keanu Sai, *A Slippery Path Towards Hawaiian Indigeneity*, 10 J.L. & Soc. Challenges 68 (Fall 2008), attached as Exhibit “C”; David Keanu Sai, *American Occupation of the Hawaiian State: A Century Gone Unchecked*, 1 Haw. J.L. & Pol. 46 (Summer 2004), attached as Exhibit “D.”

⁶ See Sai, *Slippery Path*, *supra* note 4, at 97 n. 139.

⁷ See Dan Nakaso, *Hawaii is a major hub for military, defense head says*, Honolulu Advertiser, June 1, 2012, available at:

http://www.staradvertiser.com/newspremium/20120601_Hawaii_is_a_major_hub_for_military_defense_head_says.html

State, pursuant to the 1893 Lili‘uokalani Assignment & Agreement of Restoration,⁸ HC IV, GC IV, and international law.⁹

13. According to United States military regulations, “The theater commander bears full responsibility for military government. He is, therefore, usually designated as military governor.”¹⁰ Military occupation suspends the operation of the occupied State’s civil government and “it is an obligation under international law for the occupying force to exercise the functions of civil government in the restoration and maintenance of public order. Military government is the organization which exercises these functions. An armed force in territory other than that of an enemy likewise has the duty of establishing military government when the government thereof is absent or unable to maintain order.”¹¹
14. The deliberate failure to establish a military government and to disguise the illegal occupation of the Hawaiian Islands by installing a pretended civil government called the State of Hawai‘i headed by Governor Neil Abercrombie has led to grave breaches of the GC IV, by both civilians and military on a grand scale. The UNITED STATES OF AMERICA has continually violated 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.
15. The UNITED STATES OF AMERICA does not have title to sovereignty over the Hawaiian Islands and has illegally imposed its laws in violation of established treaties with the HAWAIIAN KINGDOM as well as other international treaties and international law. Therefore, all “official acts performed by the provisional government and the Republic of Hawai‘i after the Cleveland-Lili‘uokalani agreement of restoration on December 18th 1893; and all actions done by the U.S. and its surrogates, being the Territory of Hawai‘i and the State of Hawai‘i, for and on behalf of the HAWAIIAN KINGDOM since the occupation began on 12 August 1898, cannot be recognized as legal and valid without violating international law. The only exception, according to the *Namibia* case, are the registration of births, deaths and marriages.”¹²
16. The *Namibia* case centered on the legal consequences regarding South Africa’s illegal occupation of the mandate territory of Namibia.¹³ The International Court of Justice, hereinafter “ICJ,” concluded:

⁸ See Hawaiian Protest & Demand (“Protest”) filed with President of U.N. General Assembly, 10 August 2012, 11-17, attached as Exhibit “E.”

⁹ *Id.*, 32-33; see also Sai, Dissertation, *supra* note 4, at 237-41; and Sai, *Slippery Path*, *supra* note 4, at 94-99.

¹⁰ See United States Army and Navy Manual of Military Government and Civil Affairs, FM 27-5, at 1 (1943), available at: http://www.loc.gov/rr/frd/Military_Law/pdf/mil_gov-civil_affairs.pdf.

¹¹ *Id.*, at 2.

¹² See Sai, Dissertation, *supra* note 4, at 236-37.

¹³ See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276* (1970), Advisory Opinion, I.C.J. Reports 1971, at 16.

In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.¹⁴

17. Based on the aforesaid, it must be stressed that the HAWAIIAN KINGDOM, unlike Namibia's mandate status at the time, has been a sovereign and independent state since 28 November 1843 and there is no requirement to have a juridical body declare illegal the United States occupation of the Hawaiian Islands before the legal consequences can have effect on States. In its submission, the HAWAIIAN KINGDOM is citing the jurisprudence of the ICJ with regard to exercising authority over territory by a usurping state without title.
18. The HAWAIIAN KINGDOM is aware that on the 14 and 18 of February 2013, Mr. Dexter K. Kaiama, Esq., of the Law Office of Dexter K. Kaiama submitted eight communications pursuant to Article 15 of the Rome Statute to the Office of the Prosecutor, hereinafter "OTP", of the ICC at The Hague, Netherlands.
19. The HAWAIIAN KINGDOM supports the communications of the Law Office of Dexter K. Kaiama within this Referral, of which the receipt was acknowledged by the OTP on 4 March 2013 and registered with the Communication Register of the Office, Reference No. OTP-CR-63/13.

III. JURISDICTION

20. According to the Rome Statute, there are three factors for the OTP to consider when determining jurisdiction. First, pursuant to Article 53(1)(a) of the Rome Statute, the OTP must consider whether the available information provides a reasonable basis to believe that crimes within the jurisdiction of the Court have been or are currently being committed. When this requirement is satisfied, the OTP must then consider in accordance with Articles 53(1)(b) and 17 relating to gravity and complementarity with national proceedings, respectively. And finally, if these factors are affirmed, the OTP must give consideration to the interests of justice in accordance with Article 53(1)(c).
21. The HAWAIIAN KINGDOM is a State Party to the ICC, and therefore, pursuant to Articles 13(a) and 14 of the Rome Statute, may refer to the Prosecutor a situation, of which it believes that crimes have been committed within the jurisdiction of the Court. The HAWAIIAN KINGDOM herein submits its Declaration expanding the jurisdiction of

¹⁴ *Id.*, at para. 125; see also Sai, *Dissertation*, *supra* note 4, at 229-31.

the Court to acts committed on the territory of the HAWAIIAN KINGDOM since 1 July 2002.

22. The Islands constituting the defined territory of the HAWAIIAN KINGDOM, together with its territorial seas of three miles 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

23. Although the UNITED STATES OF AMERICA is not a State Party to the ICC, the Court is only precluded from exercising its jurisdiction over crimes committed within the territory of the UNITED STATES OF AMERICA and not over United States nationals who commit crimes within the territory of State Party to the Rome Statute irrespective of whether the U.S. nationals are government officials.¹⁵

24. The events in question have and continue to occur on the territory of the HAWAIIAN KINGDOM, which is a State Party to the Rome Statute and which has duly filed its

¹⁵ See Rome Statute of the International Criminal Court:

Article 27

Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

instrument of accession under Article 125(3) thereby accepting the jurisdiction of the Court. Therefore, in accordance with Article 12(2)(a) of the Rome Statute, acts on the territory of a State Party fall within the jurisdiction of the Court irrespective of the nationalities or official titles of the alleged perpetrators, which includes Hawaiian subjects.¹⁶

A. COMPLEMENTARITY

25. The situations in which crimes have and continue to be committed in the Hawaiian Islands preclude the possibility or prosecution before national courts of the HAWAIIAN KINGDOM due to several factors. First and foremost, the HAWAIIAN KINGDOM government was illegally overthrown on 17 January 1893 by the UNITED STATES OF AMERICA and despite entering into executive agreements with the HAWAIIAN KINGDOM to restore the government it failed to carry out the provisions of the agreement because of political pressure by the United States Congress.¹⁷ During the Spanish-American War in 1898, the United States seized the islands for military purposes and began the prolonged and illegal occupation of the HAWAIIAN KINGDOM disguised as if the Hawaiian Islands were incorporated into the territory of the UNITED STATES OF AMERICA by a treaty of cession.¹⁸
26. The HAWAIIAN KINGDOM's national courts have not been operational since 17 January 1893, and the United States has not established a military government to enforce the laws of the HAWAIIAN KINGDOM in accordance with the international laws of occupation. Since 1893, there has been no lawfully constituted government in the Hawaiian Islands, whether civilian or military. On these aspects alone, the Court cannot rely on the United States authorities situated in the Hawaiian Islands to willingly or genuinely carry out comprehensive, independent and impartial investigations and prosecution of crimes committed as a result of its own illegal and prolonged occupation.
27. Moreover, the United States policy toward the ICC undermines the Rome Statute, despite playing a significant role during the drafting of the Court's rules of procedure, elements of crimes and how the ICC would operate when it served as a member of the Preparatory Committee that worked on a draft statute establishing the ICC from 1996

¹⁶ *Id.*

Article 12

Preconditions to the exercise of jurisdiction

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.
2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
 - a. The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft; [emphasis added].

¹⁷ See Protest, *supra* note 7, at 11-17.

¹⁸ *Id.*, at 17-19.

to 1998. When the Rome Statute came into force in 2002, the United States President and its Congress took deliberate steps to weaken the ICC's probable effect on U.S. nationals who commit crimes within the territory of State Parties to the Rome Statute.

28. On 27 April 2002, President Bush notified the Secretary General of the United Nations that the United States did not intend to become a party to the Rome State, which effectively "unsigned" its signature under President Clinton on 31 December 2000.¹⁹ On 2 August 2002, President Bush signed the *American Servicemembers' Protection Act* (Title II of P.L. 107-206; 22 U.S.C. §§7421-7433), which was designed to provide protections for members of the U.S. armed forces and certain other persons from the prosecutorial authority of the ICC.
29. As of 11 December 2006, the United States Department of State reported 102 bilateral immunity agreements, hereinafter "BIA", in an effort to shield former and current United States governmental officials, employees, military personnel and its nationals from the jurisdiction of the ICC.²⁰ States who sign the BIAs agree not to surrender U.S. nationals to the jurisdiction of the ICC without getting the consent of the UNITED STATES OF AMERICA first. There is no BIA between the HAWAIIAN KINGDOM and the UNITED STATES OF AMERICA.
30. On 8 November 2012, Officer Leland Pa of the Hawai'i Police Department called the headquarters of PACOM at Camp Smith, Island of O'ahu, and spoke with Ronald Winfrey, Principal Deputy Staff Judge Advocate, regarding war crime complaints made against State of Hawai'i judges filed by the Law Office of Dexter K. Kaiama with PACOM and the United Nations High Commissioner for Human Rights in Geneva, Switzerland.²¹ Officer Pa informed Winfrey of his concerns and how these complaints could affect his duties as a police officer. When asked about the complaints from Kaiama, Winfrey stated, "he knows those complaints because out of all the complaints he has read those are the most precise and clear."²²
31. Officer 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.'"²³ According to Officer Pa, "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."²⁴ Mr. Winfrey, however, did admit that should it be resolved on an international venue the

¹⁹ See American Society of International Law—International Law in Brief, *United States (U.S.): Letter to the Secretary-General of the United Nations Regarding the Rome Statute of the International Criminal Court* (April 27, 2002), available at: <http://www.asil.org/ilib0506.cfm#r3>; see also Press Statement, Richard Boucher, U.S. Dep't of State, *International Criminal Court: Letter to U.N. Secretary General Kofi Annan* (May 6, 2002), available at: <http://2001-2009.state.gov/r/pa/prs/ps/2002/9968.htm>.

²⁰ Full list of State parties available at:

http://www.law.georgetown.edu/library/research/guides/article_98.cfm

²¹ See Declaration of Leland Pa (15 December 2012), at para. 7, attached as Exhibit "F."

²² *Id.*, at para. 9.

²³ *Id.*, at para. 10.

²⁴ *Id.*, at para. 14.

prosecution of war crimes would come into play.²⁵ Clearly, the PACOM is relying on U.S. Courts to shield the alleged war criminals.

32. On 21 and 22 February 2013, Officer Pa, while on duty, received complaints from “11 individuals alleging, as protected persons, they were willfully deprived the rights to a fair and regular trial in violation of Title 18 United States Code, Section 2441, during various civil proceedings in the State of Hawai‘i Third Circuit Courts.”²⁶
33. According to Officer Pa, these complaints “were copies of complaints filed by the Law of Office of Dexter Kaiama, Esq., with the International Criminal Court, The Hague, Netherlands, dated February 18, 19, 21 and 22, 2013. For their statements regarding the alleged crimes the complainants stated to [Officer Pa] that they are relying on the information and evidence provided in their complaints with the International Criminal Court and that if there are any questions to contact Mr. Kaiama.”²⁷
34. Officer Pa thereafter initiated criminal investigations, but because the alleged crime is a Federal law and not a State of Hawai‘i law, Department Policies and Procedures call for a preliminary investigation and then route it to the PACOM, being a federal agency.²⁸ On 28 February 2013, Officer Pa telephoned Ronald Winfrey, PACOM’s Principal Deputy Staff Judge Advocate to inform him of the war crime complaints and “inquired as to who would be the person to receive these complaints when they are routed to the U.S. Pacific Command?”²⁹
35. In attempt to avoid receiving the complaints, Winfrey tried to get Officer Pa to route the complaints to the Secretary of Defense, but Officer Pa responded “the U.S. Pacific Command is a unified combatant command and is the only one in Hawai‘i that has the authority and commission to investigate and prosecute for violations of Title 18 USC Section 2441.”³⁰ Winfrey’s reply was “that although U.S. Pacific Command could do it, no one has been commissioned to handle these complaints.”³¹ When Officer Pa asked Winfrey if the complaints filed by Mr. Kaiama with PACOM in August 2012 were being investigated, he said “those complaints along with the complaints [Officer Pa] would be routing to the U.S. Pacific Command would not be investigated because ‘it is too political for the Admiral.’”³²
36. As a direct result of the actions taken by Officer Pa, his superiors at the Hawai‘i Police Department placed him on leave without pay on 1 March 2013 and launched an internal investigation. This action clearly sent a message warning all other police officers who may find themselves receiving complaints from victims that they will

²⁵ *Id.*, at para. 24.

²⁶ *See* Declaration of Leland Pa (11 June 2013), at para. 2, attached as Exhibit “G.”

²⁷ *Id.*, para. 3.

²⁸ *Id.*, para. 4.

²⁹ *Id.*, para. 5-6.

³⁰ *Id.*, para. 20.

³¹ *Id.*, para. 21.

³² *Id.*, para. 23.

also be put on leave without pay. The complaints were eventually forwarded to the department's Criminal Investigation Section and assigned to Detective Derek Morimoto, who contacted the victims and stated he was the investigating officer and that he will be forwarding the preliminary investigations to the Federal Bureau of Investigation, hereinafter "FBI," and not PACOM. Detective Morimoto also contacted Mr. Kaiama.

37. On 14 April 2013, Mr. Kaiama filed a complaint with Detective Morimoto for secondary felonies under Title 18 U.S.C. §1512(c)(2) and §372.³³ Kaiama stated, "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."³⁴
38. After having been made aware of Officer Pa being placed on leave without pay, Mr. Kaiama informed Detective Morimoto that based upon evidence and information he received, he is reporting "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 [his] clients and followed by [Officer Pa's] routing of said complaints to the United States Pacific Command, has occurred."³⁵ Kaiama reported "the commission of secondary felonies committed by judges of the third circuit, court clerks of the third circuit and attorneys" who were the very subjects of investigation in the criminal complaints that is before this Court. Kaiama concluded, "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."³⁶
39. In response to a press release put out by Mr. Kaiama announcing a press conference to be held on 9 May 2013 regarding the criminal complaints filed with the Hawai'i Police Department, the Hawai'i Tribune Herald newspaper reported, "Hawaii County police deny that they are investigating five local judges for 'war crimes.'"³⁷ The article reported, "Assistant Police Chief Marshall Kanehailua said Tuesday, however, that the department received information about the alleged crimes and forwarded the

³³ See Dexter K. Kaiama, "Complaint for the Commission of Secondary Felonies Under Title 18 U.S.C. §1512(c)(2) and §372," Apr. 14, 2013, attached as Exhibit "H."

³⁴ *Id.*, at 1.

³⁵ *Id.*, at 9.

³⁶ *Id.*, at 13.

³⁷ Hunter Bishop, *Officials deny 'war crimes' investigation*, Hawai'i Tribune Herald, May 9, 2013, available at: <http://hawaiitribune-herald.com/sections/news/local-news/officials-deny-'war-crimes'-investigation.html#.UYwdes-scCk.email>.

material to the FBI without investigation. ‘We are not investigating judges on the Big Island,’ Kanehailua said. ‘If the FBI wants to investigate, fine. We have nothing to do with that.’”³⁸

40. Coinciding with the press conference on 9 May 2013, the Hawai‘i Police Department put out the following media release:

A May 7, 2013, “press release” sent by attorney Dexter Kaiama to local media sources claims that certain state judges, attorneys and others are under investigation by the Hawai‘i Police Department for alleged war crimes based on their role in foreclosure proceedings.

The Hawai‘i Police Department recognizes Mr. Kaiama’s First Amendment right to express his beliefs regarding Hawaiian sovereignty; however, the representations as to the Hawai‘i Police Department’s involvement in the investigation of alleged war crimes are inaccurate. The Police Department is conducting no such investigation.³⁹

41. Mr. Kaiama responded with a press release on 13 May 2013 in order to “correct errors and misinformation reported in the article of May 9, 2013 in the Tribune Herald Newspaper titled “Officials deny ‘war crimes’ investigation.”⁴⁰ Mr. Kaiama clarifies that “information and communications between Detective Derek Morimoto, Criminal Investigation Division, Area 1, Hawaii Police Department, myself and the victims directly contradict Assistant Chief Kanehailua’s statement that ‘we are not investigating judges on the Big Island.’ Detective Morimoto was explicit with my clients and myself that he was the investigating officer from the Criminal Investigation Section for the alleged war crime felonies committed by the judges.”⁴¹ Mr. Kaiama’s press release concludes, “The ICC’s exercise of jurisdiction over these war crime complaints, as the court of last resort, can be invoked if the responsible law enforcement agency fails or refuses to investigate and prosecute or attempts to shield the perpetrators of the war crime.”⁴²

42. The HAWAIIAN KINGDOM is unable to investigate the alleged crimes as a direct result of the overthrow of its *de jure* government on 17 January 1893, and the UNITED STATES OF AMERICA is not only unwilling to investigate, but deliberately refuses to investigate the crimes as a direct result of its deliberate failure to comply with the international laws of occupation and establish a military government.

³⁸ *Id.*

³⁹ Hawai‘i Police Department, Office of the Chief, Chief Harry S. Kubojiri, *Police not investigating “war crimes” 05-09-13* (Media Release), available at: <http://www.hawaiipolice.com/police-not-investigating-war-crimes-05-09-13/print/>.

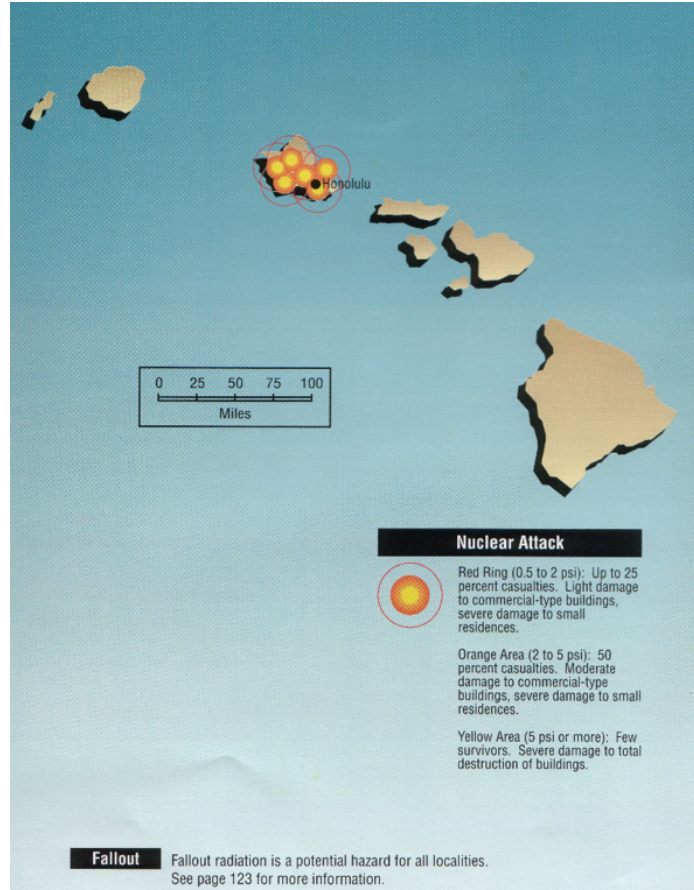
⁴⁰ Dexter K. Kaiama, Esq., *Response to May 9, 2013 Tribune Herald Newspaper Article “Officials deny ‘war crimes’ investigation,”* (Media Release), May 13, 2013, available at: <http://hawaiiankingdom.org/blog/?p=604>.

⁴¹ *Id.*

⁴² *Id.*

B. GRAVITY

43. The deliberate and willful decision by the UNITED STATES OF AMERICA'S administration, as the occupant State, not to comply with international law and establish a military government since 1893 to administer the laws of the HAWAIIAN KINGDOM, being the occupied State, has led to grave breaches and war crimes on an grand scale equal to none in the history of the world and the ramifications are world wide.
44. As a consequence of the illegal presence of United States military installations throughout the Hawaiian Islands, the UNITED STATES OF AMERICA consequently placed the Hawaiian State and its population in perilous danger from military attack by foreign States. On 7 December 1941, Japan's military attacked United States military sites on the Island of O'ahu.
45. In 1990, the United States Federal Emergency Management Agency (FEMA) published *Risks and Hazards: A State by State Guide*. One of the subjects included nuclear targets and identified six (6) nuclear targets on the island of O'ahu that coincided with the locations of military posts of the U.S. Army, Navy, Air Force and Marines. Also included as a target is the Headquarters of the U.S. Pacific Command at Camp Smith that lies in the back of a residential area in Halawa. According to FEMA, the entire Island of O'ahu would be obliterated if a nuclear attack were to take place.



46. The United States military presence also incurs the threat of attack from States and non-State actors who are adversaries of the UNITED STATES OF AMERICA. On 26 March 2013, the New York Times reported, “North Korea said on Tuesday that all of its strategic rocket and long-range artillery units ‘are assigned to strike bases of the U.S. imperialist aggressor troops in the U.S. mainland and on Hawaii and Guam and other operational zones in the Pacific as well as all the enemy targets in South Korea and its vicinity.’”⁴³ The *Christian Science Monitor* also reported, “North Korea announced today in a blizzard of threats that it is ready to target US military bases in Guam and Hawaii as part of a full-alert military posture.”⁴⁴

47. The HAWAIIAN KINGDOM is an injured State and its injuries elucidated in its Protest and Demand filed with the President of the United Nations General Assembly on 10 August 2012. The Hawaiian Protest and Demand was filed as a non-member State pursuant to Article 35(2) of the United Nations Charter against one hundred seventy-three (173) 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;
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;
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;
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.⁴⁵

48. Since the purported annexation, the UNITED STATES OF AMERICA enacted laws establishing a civilian government called the Territory of Hawai‘i in 1900 and later

⁴³ See Choe Sang-Hun, *North Korea Calls Hawaii and U.S. Mainland Targets*, N.Y. Times, Mar. 26, 2013, available at: http://www.nytimes.com/2013/03/27/world/asia/north-korea-calls-hawaii-and-us-mainland-targets.html?_r=0.

⁴⁴ See Robert Marquand, *North Korea targets Hawaii, Guam in latest threat (+video)*, The Christian Science Monitor, March 26, 2013, available at: <http://www.csmonitor.com/World/Asia-Pacific/2013/0326/North-Korea-targets-Hawaii-Guam-in-latest-threat-video>.

⁴⁵ See Protest, *supra* note 7, at 5-6.

transformed that civilian government into the State of Hawai‘i in 1959.⁴⁶ The State of Hawai‘i government utilizes the governmental infrastructure of the HAWAIIAN KINGDOM.

49. These laws enacted by the United States Congress not only have non-extraterritorial effect but is a usurpation of sovereignty and violative of treaties with the HAWAIIAN KINGDOM, HC IV, GC IV, and international law. Adhering to this principle, the United States Supreme Court concluded, “Neither the [U.S.] 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.”⁴⁷

IV. FACTS

50. In 1906, a plan was instituted by the UNITED STATES OF AMERICA, through its government of the Territory of Hawai‘i, to denationalize the children of the Hawaiian Islands in the public schools. Its purpose was to obliterate the national character of the HAWAIIAN KINGDOM and replace it with the national character of the UNITED STATES OF AMERICA and to inculcate, through repetition, American patriotism.
51. In its pamphlet titled *Patriotic Exercises in the Public Schools* (1906), formation and salute to the flag occurs on a daily basis.⁴⁸

At three minutes to nine o’clock the children assemble in front of the school, the classes forming a circle (or circles) about the flag pole or facing the building over which the stars and stripes are to float. The principal gives the order, ‘Attention!’ or ‘Face!’ The boys remove hats and the teachers, and pupils watch the flag hoisted by two of the older boys. When it reaches the top of the flag-pole, the principal gives the order, ‘Salute!’ or three cheers may be given for the flag as it is being raised.

At nine o’clock the pupils march to their class rooms to the beating of a drum or to some march played by the pianist or school band.

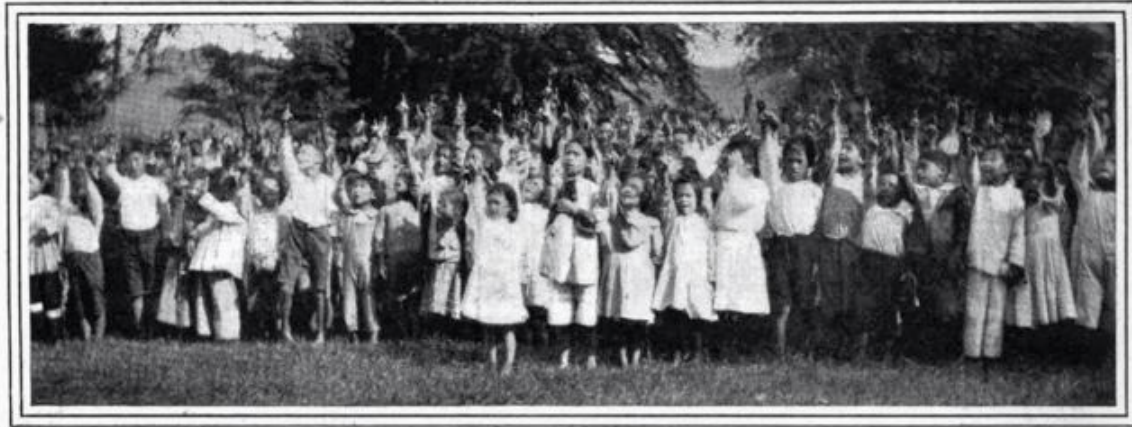
On reaching their class rooms, the children may stand by their seats and repeat in concert the following salutation: ‘We giver our heads and our hearts to God and our Country! *One Country! One Language! One Flag!*’⁴⁹

⁴⁶ *Id.*, at 19.

⁴⁷ See *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936).

⁴⁸ See Territory of Hawai‘i, Programme for Patriotic Exercises in the Public Schools, adopted by the Department of Public Instruction (1906), attached as Exhibit “I”; see also William Inglis, *Hawai‘i’s Lesson To Headstrong California*, Harper’s Weekly, February 16, 1907, at 226, attached as Exhibit “J.”

⁴⁹ See Patriotic Exercises, *supra* note 47, at 3; Inglis, *supra* note 47, at 228 (photo of children saluting the American flag).



"We give our heads and our hearts to God and our country! One country, one language, one flag!"
 THIS SCENE SHOWS THE SALUTE TO THE AMERICAN FLAG WHICH FLIES IN THE GROUNDS OF THE KAIUALANI PUBLIC SCHOOL WHICH HAS MANY JAPANESE PUPILS. THE DRILL IS CONSTANTLY HELD AS A MEANS OF INCULCATING PATRIOTISM IN THE HEARTS OF THE CHILDREN

52. Following the formation and salute to the American flag, there is a daily prayer and one of the patriotic songs is sung:

America; Star Spangled Banner; The Red, White and Blue; Battle Hymn of the Republic; Rally Round the Flag; Yankee Doodle; Hail Columbia; Home Sweet Home; Columbia, the Gem of the Ocean; Glory—Glory—Hallelujah; My Own United States; and John Brown's Body.⁵⁰

53. There is a formal talk by the teachers on patriotic topics for the day, which include.

Presidents and Famous Men; Great Events in History and Science; Current Events in United States; Vivid descriptions (illustrated whenever possible) of Great Industries, Cities, Famous Localities, Physical and Climatic Conditions.⁵¹

54. The program also calls for a different quotation to be introduced every Monday and the students repeat it each day of the week.⁵² Some of the quotations are:

"I was summoned by my country, whose voice I never hear but with veneration and love."—*George Washington*.

The union of hearts, the union of hands,
 And the flag of our Union forever.—*G.P. Morris*.

One flag, one land, one heart, one hand,
 One nation ever more!—*Holmes*.

⁵⁰ See Patriotic Exercises, supra note 47, at 6.

⁵¹ *Id.*, at 7.

⁵² *Id.*, at 7-12.

Our fathers brought forth upon this continent a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.
—*Abraham Lincoln*.

Liberty and Union, now and forever, one and inseparable.
—*Daniel Webster*.

If I were an American as I am an Englishman, while a foreign troop was landed in my country, I would never lay down my arms—never, never, never.—*Wm. Pitt, Earl of Chatham*.

I advise you not to believe in the destruction of the American nation.
(Time of Civil War.)—*John Bright*.

I was born an American; I live an American; I shall die an American; and I intend to perform the duties incumbent upon me in that character to the end of my career.—*Daniel Webster*.

Stand by the flag, all doubt and treason scorning,
Believe with courage firm and faith sublime,
That it will float until the eternal morning
Pales in its glories all the lights of time.
—*John Nicholas Wilder*.

55. The program finally provides for special anniversary dates where the teachers have a picture hung up or sketched on the blackboard and speak to his life and deeds. Here are the anniversary dates:

Jan. 18—Daniel Webster	Born Jan. 18, 1782. Recite Bunker Hill Monument
Jan. 29—McKinley	Born Jan. 29, 1843. Sing “Lead Kindly Light.”
Feb. 1—Slavery abolished	Feb. 1, 1865. Sing “Battle Hymn of the Republic.” Recite “Battle of Gettysburg.”
Feb. 12—Lincoln	Born Feb. 12, 1809. Tell anecdotes and recite “Battle of Gettysburg.”
Feb. 21—American Flag made from American Bunting	Tell about our great industries. Sing “Star Spangled Banner.” Recite “Speed on the Ship.”
Feb. 22—Washington	Born Feb. 22, 1732. Tell stories. Recite “Our Chieftain, Washington.”

March 4—Presidents	Inauguration Day. Show pictures of the Presidents or sketch them on blackboards.
March 9—Monitor and Merrimac	Battle March 9, 1862, when the men of the Monitor sang in the midst of the fight, “Yankee Doodle Dandy.”
May 9—John Brown	Born May 9, 1800. Sing “John Brown’s Body.” Tell the story of his life.
April 10—“Home Sweet Home”	The author, John Howard Payne, was born April 10, 1792. Sing the song. Tell the stories of his life.
May 20 to 25—The Flag	Joseph R. Drake wrote “America’s Flag.” Sing this song.
May 30—Memorial Day	Sing “The Battle Hymn of the Republic.” Recite “Gettysburg.”
June 14—Flag Day	Flag adopted June 14, 1777. Sing “Red, White and Blue” and “Star Spangled Banner.”
July 4—Declaration of Independence	Read part of the Declaration of Independence.
Sept. 14—“Star Spangled Banner”	Written by Francis Scott Key, Sept. 14, 1818. Sing this song. Recite “Barbara Fritche.”
Sept. 27—Samuel Adams	Born Sept. 27, 1722. Read part of Declaration of Independence, as Adams was the chief man in securing the D. of I.
Oct. 12—Discovery of America	Sing “O Columbia.” Recite “Native Land.”
Oct. 21—“America”	Dr. Smith, the author, was born Oct. 21, 1808. Sing “America.”
Dec. 22—Pilgrim Land	Recite “Landing of the Pilgrims,” Dec. 22, 1620.

56. Since the implementation of this plan, denationalization was institutionalized and the HAWAIIAN KINGDOM as a sovereign and independent State was effectively erased from the minds of the inhabitants of the Hawaiian Islands and replaced with the

UNITED STATES OF AMERICA. According to historian Tom Coffman, “The act of annexation became something that just happened.”⁵³ Coffman explained that when he “arrived in Hawai‘i in 1965, the effective definition of history has been reduced to a few years. December 7, 1941 was practically the beginning of time, and anything that might have happened before that was prehistory.”⁵⁴

57. In 2009, a revised edition of *Nation Within* by Coffman was published with a significant change in its subtitle. In the original version published in 1998, the subtitle reads “The Story of America’s Annexation of the Nation of Hawai‘i,” but the revised edition now reads “The History of the American Occupation of Hawai‘i.” Coffman explains:

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.⁵⁵

58. “Usurpation of sovereignty during military occupation” and “attempts to denationalize the inhabitants of occupied territory” was recognized as international crimes since 1919.⁵⁶ In the 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.

⁵³ See Tom Coffman, *Nation Within: The Story of America’s Annexation of the Nation of Hawai‘i* 322 (Tom Coffman/Epicenter 1999).

⁵⁴ See Tom Coffman, *Nation Within: The History of the American Occupation of Hawai‘i*, revised edition, xii (Koa Books, 2009).

⁵⁵ *Id.*, at xvi.

⁵⁶ 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).

This was carried out in most of the occupied countries including: Norway, France (particularly in the Departments of Upper Rhine, Lower Rhine, Moselle, Ardennes, Aisne, Nord, Meurthe, and Mosselle), Luxembourg, the Soviet Union, Denmark, Belgium, and Holland.⁵⁷

59. At the onset of occupation, United States government officials methodically and pursuant to plan sought to assimilate the inhabitants of the HAWAIIAN KINGDOM politically, culturally, socially, and economically into the UNITED STATES OF AMERICA. Like the Germans during World War II, the plan included economic domination, installation of puppet governments, purported *de jure* annexation and enforced conscription into the United States Armed Forces.

V. LEGAL CHARACTERIZATION

60. Two issues require attention in the context of legal characterization of the crimes in question. First, the nexus between the current crimes being committed and the United States prolonged and illegal occupation of the HAWAIIAN KINGDOM. Secondly, the unlawfulness of United States governance in the Hawaiian Islands.

61. Article 42, HC IV, provides, “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends...where such authority has been established and can be exercised.” Article 42 “emphasizes the primacy of FACT as the test of whether or not occupation exists.”⁵⁸ Military occupation is not a juridical question, but rather a factual question, and according to United States Army Field Manual 27-10, hereinafter “FM 27-10,” “Military occupation is a question of fact. It presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded.”⁵⁹ Furthermore, the GC IV 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.”⁶⁰

62. The rules of international law governing occupation are found in the HC IV and the GC IV. Article 43, HC IV, 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.” Abiding to this rule, FM 27-10 states when “restoring public order and safety, the occupant will continue in force the ordinary civil and penal (criminal) laws of the occupied

⁵⁷ See Trial of the Major War Criminals before the International Military Tribunal, *Indictment*, vol. 1, at 27, 63 (Nuremberg, Germany, 1947).

⁵⁸ See U.S. Department of Army Pamphlet 27-161-2, 2 International Law 159 (1962).

⁵⁹ See United States Army Field Manual 27-10 (“FM 27-10”), Section 355.

⁶⁰ See Article 2, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

territory.”⁶¹ Therefore, “occupation confers upon the invading force the means of exercising control for 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.”⁶²

63. The fact that the Hawaiian Islands is an occupied territory which falls within the ambit of the HC IV and the GC IV means that it is covered by the rules governing a prolonged and illegal occupation.
64. Under Article 4, GC IV, protected persons are those who, at a given moment and in any manner whatsoever, find themselves, in the hands of an Occupying Power of which they are not nationals. Protected persons in the Hawaiian Islands include Hawaiian subjects and nationals of foreign States who have ratified the GC IV.⁶³ Although United States nationals are not protected persons because their State is the Occupier, this does not preclude the OTP from investigating United States nationals who commit crimes within the territory of the HAWAIIAN KINGDOM whether they are civilians, military or government officials.⁶⁴

VI. INTERNATIONAL CRIMES UNDER THE ROME STATUTE

- **Article 8(2)(a)(iv)—Extensive...appropriation of property, not justified by military necessity and carried out unlawfully and wantonly**

65. Between 2002 and 2012, the United States Internal Revenue Service, hereinafter “IRS,” illegally appropriated \$74.8 million dollars from the residents of the Hawaiian Islands.⁶⁵ During this same period, the government of the State of Hawai‘i additionally appropriated \$2.2 billion dollars illegally.⁶⁶ The IRS is an agency of the UNITED STATES OF AMERICA and cannot appropriate money from the inhabitants of an occupied State without violating international law. The State of Hawai‘i is a political subdivision of the UNITED STATES OF AMERICA established by an Act of Congress in 1959 and at an entity without any extraterritorial effect, it couldn’t appropriate money from the inhabitants of an occupied State without violating the international laws of occupation.

⁶¹ See FM 27-10, Section 370.

⁶² *Id.*, Section 358.

⁶³ See full list of 195 State Parties to the GC IV available at:

http://www.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=380.

⁶⁴ See Rome Statute, *supra* note 14.

⁶⁵ See IRS, *Gross Collections, by Type of Tax and State and Fiscal Year, 1998-2012*, available at: <http://www.irs.gov/uac/SOI-Tax-Stats-Gross-Collections,-by-Type-of-Tax-and-State,-Fiscal-Year-IRS-Data-Book-Table-5>.

⁶⁶ See State of Hawai‘i Department of Taxation Annual Reports, available at: http://www6.hawaii.gov/tax/a5_1annual.htm.

66. According to the laws of the HAWAIIAN KINGDOM, taxes upon the inhabitants of the Hawaiian Islands include: an annual poll tax of \$1 dollar to be paid by every male inhabitant between the ages of seventeen and sixty years; an annual tax of \$2 dollars for the support of public schools to be paid by every male inhabitant between the ages of twenty and sixty years; an annual tax of \$1 dollar for every dog owned; an annual road tax of \$2 dollars to be paid by every male inhabitant between the ages of seventeen and fifty; and an annual tax of $\frac{3}{4}$ of 1% upon the value of both real and personal property.⁶⁷
67. The *Merchant Marine Act*, June 5, 1920 (41 U.S. Stat. 988), hereinafter referred to as the *Jones Act*, is a restraint of trade and commerce in violation of international law and treaties between the HAWAIIAN KINGDOM and other foreign States. According to the *Jones Act*, all goods, which includes tourists on cruise ships, whether originating from Hawai'i or being shipped to Hawai'i must be shipped on vessels built in the United States that are wholly owned and crewed by United States citizens. And should a foreign flag ship attempt to unload foreign goods and merchandise in the Hawaiian Islands will have to forfeit its cargo to the to the U.S. Government, or an amount equal to the value of the merchandise or cost of transportation from the person transporting the merchandise.
68. As a result of the *Jones Act*, there is no free trade in the Hawaiian Islands. 90% of Hawai'i's food is imported from the United States, which has created a dependency on outside food. The three major American ship carriers for the Hawaiian Islands are Matson, Horizon Lines, and Pasha Hawai'i Transport Services, as well as several low cost barge alternatives. Under the *Jones Act*, these American carriers travel 2,400 miles to ports on the west coast of the United States in order to reload goods and merchandise delivered from Pacific countries on foreign carriers, which would have otherwise come directly to Hawai'i ports. The cost of fuel and the lack of competition drive up the cost of shipping and contribute to Hawai'i's high cost of living. Gas tax is \$.47 per gallon as a result of the *Jones Act* because only American ship carriers can transport oil to the Hawaiian Islands to be converted into gas. And according to the USDA Food Cost, Hawai'i residents in January 2012 pay an extra \$417 per month for food on a thrifty plan than families who are on a thrifty plan in the UNITED STATES OF AMERICA.⁶⁸
69. Appropriating monies directly through taxation and appropriating monies indirectly as a result of the *Jones Act* to benefit American ship carriers and businesses is unlawful and therefore are international crimes that fall under the Court's jurisdiction.

⁶⁷ See Civil Code of the Hawaiian Islands, *To Consolidate and Amend the Law Relating to Internal Taxes* (Act of 1882), at 117-120, available at: http://www.hawaiiankingdom.org/civilcode/pdf/CL_Title_2.pdf.

⁶⁸ See United States Department of Agriculture Center for Nutrition Policy and Promotion, *Cost of Food at Home*, available at: <http://www.cnpp.usda.gov/USDAFoodCost-Home.htm#AK%20and%20HI>.

- **Article 8(2)(a)(v)—Compelling a...protected person to serve in the forces of a [Occupying] Power**

70. The United States Selective Service System is an agency of the United States government that maintains information on those potentially subject to military conscription. Under the *Military Selective Service Act*, “it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.”⁶⁹ Conscription of the inhabitants of the HAWAIIAN KINGDOM unlawfully inducted into the United States Armed Forces through the Selective Service System occurred during World War I (September 1917-November 1918), World War II (November 1940-October 1946), Korean War (June 1950-June 1953), and the Vietnam War (August 1964-February 1973). Andrew L. Pepper, Esq., heads the Selective Service System in the Hawaiian Islands headquartered on the Island of O’ahu.

71. Although induction into the United States Armed Forces has not taken place since February 1973, the requirements to have residents of the Hawaiian Island who reach the age of 18 to register with the Selective Service System for possible induction is unlawful and therefore is an international crime that falls under the Court’s jurisdiction.

- **Article 8(2)(a)(vi)—Willfully depriving a...protected person of the rights of fair and regular trial**

72. Since 18 December 1893, there have been no lawfully constituted courts in the Hawaiian Islands whether HAWAIIAN KINGDOM courts or military commissions established by order of the Commander of PACOM in conformity with the HC IV, GC IV, and the international laws of occupation. All Federal and State of Hawai‘i Courts in the Hawaiian Islands derive their authority from the United States Constitution and the laws enacted in pursuance thereof.⁷⁰ As such these Courts cannot claim to have any authority in the territory of a foreign State and therefore are not properly constituted to give defendant(s) a fair and regular trial.

73. In a civil case hearing that came before Judge Glenn S. Hara, *Wells Fargo Bank, N.A., vs. Elaine E. Kawasaki, et al.*, civil no. 11-1-106, in the Circuit Court of the Third Circuit, State of Hawai‘i, on 15 June 2012, Mr. Kaiama, Esq., provided special appearance for Defendant Elaine E. Kawasaki on a motion to dismiss for lack of subject matter jurisdiction based on two executive agreements entered into between U.S. President Grover Cleveland and the HAWAIIAN KINGDOM’s Queen Lili‘uokalani

⁶⁹ See Title 50 U.S.C. App. 453, The Military Selective Service Act.

⁷⁰ See *United States v. Curtiss-Wright Export Corp.*, *supra* note 45.

in 1893.⁷¹ The motion to dismiss was substantially the same as the motions that were incorporated as evidence in the criminal complaints filed by Mr. Kaiama with the ICC in February 2013, and by the victims themselves with the Hawai‘i Police Department in February 2013 as aforementioned, and Judge Hara is one of four judges alleged to have committed a war crime in those complaints.

74. After arguing the merits of the case, Mr. Kaiama states, “I have now been arguing, Your Honor, this motion before judges of the courts of the circuit court and district court throughout the State of Hawai‘i, and nearly—and probably over 20 times, and in not one instance has the plaintiff in the cases challenged the merits of the executive agreement or that the executive agreements have been terminated. Because we believe, respectfully, again, Your Honor, they cannot.”⁷² He continues to argue that “it’s irrefutable that these are executive agreements and preempts state law, ...which is the state statute that plaintiff relies on in their complaint seeking to confer jurisdiction upon that court,”⁷³ and “once we have met our burden [of proof], the court cannot have no other, we believe, no other recourse but to dismiss the complaint.”⁷⁴ Unable to deny the evidence, Judge Hara replies, “what you’re asking the court to do is commit suicide, because once I adopt your argument, I have no jurisdiction over anything. Not only these kinds of cases..., but jurisdiction of the courts evaporate. All of the courts across the state from the supreme court down, and we have no judiciary. I can’t do that.”⁷⁵

75. Two issues resonate from Judge Hara’s statement: first, he’s admitting to the veracity of the evidence; and, secondly, he knowingly and deliberately denied the Defendant, Ms. Elaine Kawasaki, and fair and regular trial, and allowed the Plaintiff, Wells Fargo Bank, to proceed to unlawfully seize upon her home. Unfair trials can lead to other crimes under the Court’s jurisdiction that include appropriation of property, both real and personal, and unlawful confinement. Therefore, the deliberate denial of a protected person’s right to a fair and regular trial, appropriation of property, and unlawful confinement remain international crimes that fall under the Court’s jurisdiction.

- **Article 8(2)(a)(vii)—Unlawful deportation or transfer or unlawful confinement**

76. According to the United States Department of Justice, the prison population in the Hawaiian Islands in 2009 was at 5,891.⁷⁶ Of this population there were 286 aliens.⁷⁷

⁷¹ See *Wells Fargo Bank, N.A., vs. Elaine E. Kawasaki, et al.*, civil no. 11-1-106, Circuit Court of the Third Circuit, State of Hawai‘i, Transcripts (June 15, 2012), attached as Exhibit “K.”

⁷² *Id.*, at 9.

⁷³ *Id.*, at 12.

⁷⁴ *Id.*, at 13.

⁷⁵ *Id.*

⁷⁶ See United States Department of Justice’s Bureau of Justice Statistics, *Prisoners in 2011*, available at: <http://www.bjs.gov/content/pub/pdf/p11.pdf>.

⁷⁷ See United States Government Accountability Office, *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs* (March 2011), available at: <http://www.gao.gov/new.items/d11187.pdf>.

Two paramount issues arise—first, prisoners were sentenced by courts that were not properly constituted under HAWAIIAN KINGDOM law and/or the international laws of occupation and therefore were unlawfully confined, which is a war crime under this court’s jurisdiction; second, the alien prisoners were not advised of their rights in an occupied State by their State of nationality in accordance with the 1963 *Vienna Convention on Consular Relations*.⁷⁸ Compounding the violation of alien prisoners rights under the *Vienna Convention*, Consulates located in the Hawaiian Islands were granted exequaturs by the government of the UNITED STATES OF AMERICA by virtue of United States treaties and not treaties between the HAWAIIAN KINGDOM and these foreign States.⁷⁹

77. In 2003, the State of Hawai‘i Legislature allocated funding to transfer up to 1,500 prisoners to private corrections institutions in the UNITED STATES OF AMERICA.⁸⁰ By June of 2004, there were 1,579 Hawai‘i inmates in these facilities. Although the transfer was justified as a result of overcrowding, the government of the State of Hawai‘i did not possess authority to transfer, let alone to prosecute in the first place. Therefore, the unlawful confinement and transfer of inmates remain international crimes that fall under the Court’s jurisdiction.

- **Article 8(2)(a)(viii)—The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory**

78. Once a State is occupied, international law preserves the *status quo* of the occupied State as it was before the occupation began. To preserve the nationality of the occupied State from being manipulated by the occupying State to its advantage, international law only allows individuals born within the territory of the occupied State to acquire the nationality of their parents—*jus sanguinis*. To preserve the *status quo*, Article 49 of the GC IV mandates that the “Occupying Power shall not...transfer parts of its own civilian population into the territory it occupies.” For individuals, who were born within Hawaiian territory, to be a Hawaiian subjects they must be a direct descendant of a person or persons who were Hawaiian subjects prior to the American occupation that began on 12 August 1898. All other individuals born after 12 August 1898 to the present are aliens who can only acquire the nationality of their parents.

79. According to the 1890 government census, Hawaiian subjects numbered 48,107, with the aboriginal Hawaiian, both pure and part, numbering 40,622, being 84% of the national population, and the non-aboriginal Hawaiians numbering 7,485, being 16%. Despite the massive and illegal migrations of foreigners to the Hawaiian Islands since

⁷⁸ See *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 466.

⁷⁹ See *Protest*, at 48.

⁸⁰ See State of Hawai‘i, Department of Public Safety, *Response to Act 200, Part III, Section 58, Session Laws of Hawai‘i 2003 As Amended by Act 41, Part II, Section 35, Session Laws of Hawai‘i 2004*, (January 2005), available at: http://lrbhawaii.info/reports/legrpts/psd/2005/act200_58_slh03_05.pdf.

1898, which, according to the State of Hawai‘i numbers 1,302,939 in 2009,⁸¹ the *status quo* of the national population of the HAWAIIAN KINGDOM is maintained. Therefore, under the international laws of occupation, the aboriginal Hawaiian population of 322,812 in 2009 would continue to be 84% of the Hawaiian national population, and the non-aboriginal Hawaiian population of 61,488 would continue to be 16%. The balance of the population in 2009, being 918,639, are aliens who were illegally transferred, either directly or indirectly, by the UNITED STATES OF AMERICA as the occupying Power, and therefore is an international crime that falls under the Court’s jurisdiction.

- **Article 8(2)(b)(xiii)— Destroying or seizing the [Occupied State’s] property unless such destruction or seizure be imperatively demanded by the necessities of war**

80. On 12 August 1898, the UNITED STATES OF AMERICA seized approximately 1.8 million acres of land that belonged to the government of the HAWAIIAN KINGDOM and to the office of the Monarch. These lands were called Government lands and Crown lands, respectively, whereby the former being public lands and the latter private lands.⁸² These combined lands constituted nearly half of the entire territory of the HAWAIIAN KINGDOM.

81. Beginning on 20 July 1899, President McKinley began to set aside portions of these lands by executive orders for “installation of shore batteries and the construction of forts and barracks.”⁸³ The first executive order set aside 15,000 acres for two Army military posts on the Island of O‘ahu called Schofield Barracks and Fort Shafter. This soon followed the securing of lands for Pearl Harbor naval base in 1901 when the U.S. Congress appropriated funds for condemnation of seven hundred nineteen (719) acres of private lands surrounding Pearl River, which later came to be known as Pearl Harbor.⁸⁴ By 2012, the U.S. military has one hundred eighteen (118) military sites

⁸¹ See State of Hawai‘i. Department of Health, Hawai‘i Health Survey (2009), available at: <http://www.ohadatabook.com/F01-05-11u.pdf>; see also Sai, A Century Gone Unchecked, *supra* note 4, at 63-65.

⁸² Public lands were under the supervision of the Minister of the Interior under Article I, Chapter VII, Title 2—*Of The Administration of Government*, Civil Code, at §39-§48 (1884), and Crown lands were under the supervision of the Commissioners of Crown Lands under *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*, Civil Code, Appendix, at 523-525 (1884). Crown lands are private lands that “descend in fee, the inheritance being limited however to the successors to the throne, and each successive possessor may regulate and dispose of the same according to his will and pleasure, as private property,” *In the Matter of the Estate of His Majesty Kamehameha IV., late deceased*, 2 Haw.715, 725 (1864), subject to *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*.

⁸³ See Robert H. Horwitz, Judith B. Finn, Louis A. Vargha, and James W. Ceaser, *Public Land Policy in Hawai‘i: An Historical Analysis*, 20 (State of Hawai‘i Legislative Reference Bureau Report No. 5, 1969).

⁸⁴ See John D. VanBrackle, “Pearl Harbor from the First Mention of ‘Pearl Lochs’ to Its Present Day Usage,” 21-26 (undated manuscript on file in Hawaiian-Pacific Collection, Hamilton Library, University of Hawai‘i at Manoa).

that span 230,929 acres of the Hawaiian Islands, which is 20% of the total acreage of Hawaiian territory.⁸⁵

82. Military training locations include Pacific Missile Range Facility, Barking Sands Tactical Underwater Range, and Barking Sands Underwater Range Expansion on the Island of Kaua'i; the entire Islands of Ni'ihau and Ka'ula; Pearl Harbor, Lima Landing, Pu'uloa Underwater Range—Pearl Harbor, Barbers Point Underwater Range, Coast Guard AS Barbers Point/Kalaeloa Airport, Marine Corps Base Hawai'i, Marine Corps Training Area Bellows, Hickam Air Force Base, Kahuku Training Area, Makua Military Reservation, Dillingham Military Reservation, Wheeler Army Airfield, and Schofield Barracks on the Island of O'ahu; and Bradshaw Army Airfield and Pohakuloa Training Area on the Island of Hawai'i.
83. The United States Navy's Pacific Fleet headquartered at Pearl Harbor hosts the Rim of the Pacific Exercise (RIMPAC) every other even numbered year, which is the largest international maritime warfare exercise. RIMPAC is a multinational, sea control and power projection exercise that collectively consists of activity by the U.S. Army, Air Force, Marine Corps, and Naval forces, as well as military forces from other foreign States. During the month long exercise, RIMPAC training events and live fire exercises occur in open-ocean and at the military training locations throughout the Hawaiian Islands.
84. In 2006, the United States Army disclosed to the public that depleted uranium (DU) was found on the firing ranges at Schofield Barracks on the Island of O'ahu.⁸⁶ It subsequently confirmed DU was also found at Pohakuloa Training Area on the Island of Hawai'i and suspect that DU is also at Makua Military Reservation on the Island of O'ahu.⁸⁷ The ranges have yet to be cleared of DU and the ranges are still used for live fire. This brings the inhabitants who live down wind from these ranges into harms way because when the DU ignites or explodes from the live fire, it creates tiny particles of aerosolized DU oxide that can travel by wind. And if the DU gets into the drinking water or oceans it would have a devastating effect across the islands.
85. The HAWAIIAN KINGDOM has never consented to the establishment of military installations throughout its territory and these installations and war-gaming exercises stand in direct violation of Articles 1, 2, 3 and 4, 1907 Hague Convention, V, *Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land*, HC IV, and GC IV, and therefore are international crimes that fall under the Court's jurisdiction.

⁸⁵ See U.S. Department of Defense's Base Structure Report (2012), available at: <http://www.acq.osd.mil/ie/download/bsr/BSR2012Baseline.pdf>.

⁸⁶ See U.S. Army Garrison-Hawai'i, Depleted Uranium on Hawai'i's Army Ranges, available at: <http://www.garrison.hawaii.army.mil/du/>.

⁸⁷ *Id.*

VII. CONCLUSION

86. The international crimes committed more than sufficiently meet the test of gravity provided for under Articles 17(1)(d) and 53 of the Rome Statute.
87. As the evidence demonstrates, the HAWAIIAN KINGDOM is an injured State and has been under an illegal and prolonged occupation by the UNITED STATES OF AMERICA since 1898 that resulted in the commission of War Crimes falling within ICC's subject matter jurisdiction.
88. The ICC has jurisdiction to consider these matters, as the crimes were committed within the territory of a State Party to the Rome Statute and that based on the circumstances present in these matters, the preconditions to the exercise of the Court's jurisdiction have been more than satisfied. Therefore, the circumstances of this Referral demonstrate that the complementarity test has not been satisfied because there are no independent, impartial and good faith investigations and prosecutions being carried out at the national level, and, therefore, the Court must exercise its jurisdiction, whereby sufficient gravity has been clearly met.
89. The Rome Statute also provides for a presumption in favor of investigations and prosecutions of international crimes of concern to the international community. A thorough consideration of all the circumstances involving the Hawaiian situation will undoubtedly lead to the reasonable conclusion that the interests of justice (Article 53 of the Rome Statute) will be served when the Prosecutor proceeds to an investigation under Articles 12(2)(a), 13(a) and 14 of the Rome Statute.
90. Based on the aforesaid, the HAWAIIAN KINGDOM respectfully request the Madame Prosecutor of the ICC to urgently initiate an investigation pursuant to Articles 13(a) and 14 of the Rome Statute into the crimes committed as a result of the prolonged and illegal occupation of the HAWAIIAN KINGDOM by the UNITED STATES OF AMERICA that have transpired since 1 July 2002.

The HAWAIIAN KINGDOM reserves the right to present further grounds for its Referral giving fuller particulars, which it will deposit with the OTP in due course.



David Keanu Sai, Ph.D.

LISTS OF EXHIBITS

- Exhibit “A” Hawaiian Instrument of Accession filed with the Swiss Foreign Ministry, 14 January 2013.
- Exhibit “B” David Keanu Sai (2008), *The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State* (Doctoral dissertation).
- Exhibit “C” David Keanu Sai, *A Slippery Path Towards Hawaiian Indigeneity*, 10 J.L. & Soc. Challenges 68 (Fall 2008).
- Exhibit “D” David Keanu Sai, *American Occupation of the Hawaiian State: A Century Gone Unchecked*, 1 Haw. J.L. & Pol. 46 (Summer 2004).
- Exhibit “E” Hawaiian Protest & Demand (“Protest”) filed with President of U.N. General Assembly, 10 August 2012.
- Exhibit “F” Declaration of Leland Pa (15 December 2012).
- Exhibit “G” Declaration of Leland Pa (11 June 2013).
- Exhibit “H” Dexter K. Kaiama, “Complaint for the Commission of Secondary Felonies Under Title 18 U.S.C. §1512(c)(2) and §372,” Apr. 14, 2013.
- Exhibit “I” Territory of Hawai‘i, Programme for Patriotic Exercises in the Public Schools, adopted by the Department of Public Instruction (1906).
- Exhibit “J” William Inglis, *Hawai‘i’s Lesson To Headstrong California*, Harper’s Weekly, February 16, 1907
- Exhibit “K” *Wells Fargo Bank, N.A., vs. Elaine E. Kawasaki, et al.*, civil no. 11-1-106, Circuit Court of the Third Circuit, State of Hawai‘i, Transcripts (June 15, 2012).