



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HWY., SUITE 200
HONOLULU, HAWAII 96817

May 5, 2014

Secretary of State John F. Kerry
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Re: Inquiry into the Legal Status of the Hawaiian Kingdom as an Independent Sovereign State

Dear Secretary Kerry,

As the Chief Executive Officer for the Office of Hawaiian Affairs, being a governmental agency of the State of Hawai'i, the law places on me, as a fiduciary, strict standards of diligence, responsibility and honesty. My executive staff, as public officials, carry out the policies and directives of the Trustees of the Office of Hawaiian Affairs in the service of the Native Hawaiian community. We are responsible to take care, through all lawful means, that we apply the best skills and diligence in the servicing of this community. It is in this capacity and in the interest of the Office of Hawaiian Affairs I am submitting this communication and formal request.

The Office of Hawaiian Affairs was established by a Constitutional Convention held in Hawai'i in 1978. Under Article XII of the Constitution of the State of Hawai'i, the "Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians; to formulate policy relating to affairs of native Hawaiians and Hawaiians; and to exercise control over real and personal property set aside by state, federal or private sources and transferred to the board for native Hawaiians and Hawaiians. The board shall have the power to exercise control over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board."

In 2011, Governor Abercrombie signed into law Act 195 that formally recognized "Native Hawaiians as the only indigenous, aboriginal, maoli population of Hawai'i." Act 195

also committed the State of Hawai'i "to support the continuing development of a reorganized Native Hawaiian governing entity and, ultimately, the federal recognition of Native Hawaiians." To accomplish this effort Act 195 established a Native Hawaiian Roll Commission who is responsible for "preparing and maintaining a roll of qualified Native Hawaiians" in order "to facilitate the process under which qualified Native Hawaiians may independently commence the organization of a convention of qualified Native Hawaiians, established for the purpose of organizing themselves." According to Act 195, the Roll Commission has been housed within the Office of Hawaiian Affairs for administrative purposes and we are responsible for funding the Roll Commission. An extended deadline for registering Native Hawaiians on the Roll was May 1, 2014.

On April 17, 2014, one of my executive managers attended a presentation and panel discussion at the University of Hawai'i at Manoa William S. Richardson School of Law that featured former Hawai'i governor John Waihe'e, III, chairman of the Roll Commission, senior Law Professor Williamson Chang, and Dr. Keanu Sai, a political scientist. The presentations of Professor Chang and Dr. Sai provided a legal analysis of the current status of Hawai'i that appeared to undermine the legal basis of the Roll Commission, and, as alleged in the panel discussions, the possibility of criminal liability under international law. Both Professor Chang and Dr. Sai specifically stated that the Federal and State of Hawai'i governments are illegal regimes that stem from an illegal and prolonged occupation by the United States as a result of the illegal overthrow of the Hawaiian Kingdom government. As a government agency of the State of Hawai'i this would include the Office of Hawaiian Affairs, and by enactment of the State of Hawai'i Legislature, it would also include the Roll Commission. Both Act 195 and U.S. Public Law 103-150, acknowledge the illegality of the overthrow.

Dr. Sai made specific reference to two sole-executive agreements entered into through executive mediation between President Grover Cleveland and Queen Lili'uokalani in 1893 that obligated the United States to administer Hawaiian law and to restore the government of the Hawaiian Kingdom. He argues that although the executive agreements were not carried out, they remain in force and bind successor Presidents for their faithful execution, and that both federal law and international law recognizes sole-executive agreements as treaties. If this were true, it would also preclude the Office of Hawaiian Affairs current plan, through Act 195, of establishing a Native Hawaiian governing entity that will seek federal recognition.

For your consideration, I have enclosed Dr. Sai's law journal article published in the Journal of Law and Social Challenges that compares federal recognition under the Akaka bill and the international laws of occupation. Act 195 is the State of Hawai'i's version of the Akaka bill. Dr. Sai argues that Native Hawaiians are not indigenous people of the United States, but rather nationals of an occupied State. In addition, I'm am also enclosing a brief authored by Dr. Sai and Professor Matthew Craven from the University of London, SOAS, Law School, titled "The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom;" a DVD packet with booklet of the Larsen v. Hawaiian Kingdom, Permanent Court of Arbitration, The Hague, Netherlands (1999-2001); a Complaint filed with the President of the United Nations Security Council in 2001 (without exhibits); a Protest and Demand filed with the President of the United Nations General Assembly in 2012 (without exhibits); a Referral submitted with the Prosecutor of the International Criminal Court at the Hague, Netherlands, in

2013, calling upon the Prosecutor for the investigation of war crimes alleged to have been committed in Hawai'i (without exhibits); and a complaint for war crimes filed with the Philippine government under its universal jurisdiction alleging that one of our Trustees of the Office of Hawaiian Affairs, Ms. S. Haunani Apoliona, committed a war crime in her private capacity as a member of the Board of Directors for the Bank of Hawai'i (without exhibits).

These matters have raised grave concerns with regard to not only the Native Hawaiian community we serve, but also to the vicarious liability of myself, staff and Trustees of the Hawaiian Affairs, and members of the Native Hawaiian Roll Commission. The community we serve, the Trustees, and many of my staff members, to include myself, and the members of the Roll Commission are Native Hawaiians, who are direct descendants of Hawaiian subjects of the Hawaiian Kingdom. And as a State of Hawai'i governmental agency, it would also appear that I am precluded from seeking any opinion on the veracity of these allegations from our in house counsel or from the State of Hawai'i Attorney General, because there would appear to exist a conflict of interest if these allegations are true.

In light of the aforementioned, and because the Department of State is the United States' executive department responsible for international relations and who also housed diplomatic papers and agreements with the Hawaiian Kingdom, I am respectfully submitting a formal request to have the Department of State request an opinion from the Office of Legal Counsel, Department of Justice, addressing the following questions:

- First, does the Hawaiian Kingdom, as a sovereign independent State, continue to exist as a subject of international law?
- Second, if the Hawaiian Kingdom continues to exist, do the sole-executive agreements bind the United States today?
- Third, if the Hawaiian Kingdom continues to exist and the sole-executive agreements are binding on the United States, what effect would such a conclusion have on United States domestic legislation, such as the Hawai'i Statehood Act, 73 Stat. 4, and Act 195?
- Fourth, if the Hawaiian Kingdom continues to exist and the sole-executive agreements are binding on the United States, have the members of the Native Hawaiian Roll Commission, Trustees and staff of the Office of Hawaiian Affairs incurred criminal liability under international law?

Secretary of State John F. Kerry

May 5, 2014

Page 4

While I await the opinion from the Office of Legal Counsel, I will be requesting approval from the Trustees of the Office of Hawaiian Affairs that we refrain from pursuing a Native Hawaiian governing entity until we can confirm that the Hawaiian Kingdom, as an independent sovereign State, does not continue to exist under international law and that we, as individuals, have not incurred any criminal liability in this pursuit.

Sincerely,



Kamana`opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Officer

:KC

Enclosures

cc: Chairperson Colette Y. Machado, Trustee of the Office of Hawaiian Affairs
Peter Apo, Trustee of the Office of Hawaiian Affairs
Carmen Hulu Lindsey, Trustee of the Office of Hawaiian Affairs
Dan Ahuna, Trustee of the Office of Hawaiian Affairs
John D. Waihe'e, IV, Trustee of the Office of Hawaiian Affairs
Oswald K. Stendor, Trustee of the Office of Hawaiian Affairs
Robert K. Lindsey, Jr., Trustee of the Office of Hawaiian Affairs
Rowena N. Akana, Trustee of the Office of Hawaiian Affairs
S. Haunani Apoliona, MSW, Trustee of the Office of Hawaiian Affairs
John Waihe'e, III, Chair of the Native Hawaiian Roll Commission
Neil Abercrombie, Governor of the State of Hawai'i
Admiral Samuel J. Locklear III, USN, Commander U.S. Pacific Command