BESCHWERDEKAMMER DES BUNDESSTRAFGERICHTS

BESCHWERDE

Dr. David Keanu Sai
c/o Michico Testini
Av. Eugène Lance 44
1212 Grand Lancy/GE

Bevollmächtigter der Beschwerdeführer

Beschwerdekammer des Bundesstrafgerichts
Posstfach 2720
6501 Bellinzona/TI

BESCHWERDE
(Enstprechend Art. 393 ff. StPO)

Die Beschwerdeführer Kale Kepekaio Gumapac und [redacted] (hiernach kollektiv als BESCHWERDEFÜHRER bezeichnet), erheben hiermit durch ihren Bevollmächtigten höflich Beschwerde gegen die Entscheidung der Schweizerischen Bundesanwaltschaft (hiernach als BUNDESANWALTSCHAFT bezeichnet) vom 3. Februar 2015 betreffens der Strafanzeige wegen Kriegsverbrechen durch BESCHWERDEFÜHRER Gumapac, einen hawaiischen Untertanen, und BESCHWERDEFÜHRER [redacted], einen Schweizer Bürger, entprechend Art. 264c, Abs. 1 Bst. d und 264g Abs. 1 Bst. c StGB; Art. 108 und 109 aMStG.

I. DARSTELLUNG DER TATSACHEN:

1. Am 3. Februar 2015 verfügte die BUNDESANWALTSCHAFT, dass die Schweizer Behörden auf die Strafanzeigen, die infolge der von Professor Niklaus Schweizer im Sinne von Art. 301 StOPO eingebrachten Hinweise wegen des Begehens von Kriegsverbrechen gestellt wurden, entsprechend Art. 310 StPO i.V. m. Art. 319 StPO nicht eintreten werden.
2. Die Nichtanhandnahmeverfügung wurde per Einschreiben an Dr. Keanu Sai, Bevollmächtigter der BESCHWERDEFÜHRER, c/o [redacted], Av. Eugène Lance 44, 1212 Grand Lancy/GE, zugestellt.
3. Im Auftrag von Dr. Sai bestätigte Frau Testini den Eingang der Verfügung am 23 März 2015.
4. Gegen diesen Entscheid kann entsprechend Art. 393 ff StPO innert 10 Tagen seit der Zustellung oder Eröffnung schriftlich und begründet bei der Beschwerdekammer des Bundesstrafgerichts, Postfach 2720, 6501 Bellinzona/TI, Beschwerde erhoben werden.

II. DARLEGUNG DER STREITPUNKTE UND KLAGEBEGEHREN

A. Darlegung der Streitpunkte

1. Die BUNDESANWALTSCHAFT rechtfertigte die Entscheidung, keine Ermittlungen betreffs der mutmaßlichen Kriegsverbrechen einzuleiten mit der Begründung, Straftatbestände entsprechend Art. 310, Abs. 1, Bst. a StPO seien nicht erfüllt.
2. Der Hauptgrund für die Nichteinleitung von Ermittlungen ist, dass die Vereinigten Staaten die Republik Hawai‘i im Jahr 1898 angeblich

annektierten, wobei behauptet wird, dass genannte Republik das vormalige Königreich Hawai‘i repräsentierte. Die BUNDESANWALTSCHAFT erklärte: „Die der Annexion zugrunde liegende Resolution übertrug sämtliche Souveränitätsrechte in und über die hawaiischen Inseln und die von Hawaii abhängigen Gebiete mit Zustimmung der Regierung der Republik Hawaii den Vereinigten Staaten von Amerika und machte diese zu amerikanischem Territorium (vgl. *55th Congress of the united* [sic] *States of America, Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States vom 7. Juli 1898*). Am 21. August 1959 wurde Hawaii als 50. Bundesstaat in die Union der Vereinigten Staaten aufgenommen.“

3. Des Weiteren stellte die BUNDESANWALTSCHAFT fest: „Hawai‘i wird demnach von der offiziellen Schweiz als Teil der USA anerkannt und war im relevanten Tatzeitraum von 2006-2013 aus schweizerischer Sicht weder vollständig noch teilweise von den Vereinigten Staaten besetzt, was eine Anwendung der Genfer Konvention und die sich darauf abstützenden Art. 108 und 109 aMStG bzw. Art. 264b ff. StGB von vornherein ausschliesst.“
4. Die BESCHWERDEFÜHRER, durch ihren Bevollmächtigten, schliessen die in dem Bericht vom 7. Dezember 2014 mit dem Titel „War Crimes Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands (hiernach „War Crime Report”)” enthaltenen und von der BUNDESANWALTSCHAFT in ihrem Bericht zur Kenntnis genommenen Informationen, als wie hier vollständig dargelegt, ein. Der „War Crimes Report“ kommt zu drei hauptsächlichen Schlüssen, die die rechtliche und historische Basis für die Strafanzeige der BESCHWERDEFÜHRER darstellen: (a) Das Hawaiische Königreich existierte als unabhängiger Staat; (b) das Hawaiische Königreich existiert weiterhin als unabhängiger Staat trotz des illegalen Sturzes seiner Regierung durch die Vereinigten Staaten; und (c) unter Verletzung des humanitären Völkerrechts werden Kriegsverbrechen begangen.
5. Die Abstützung der BUNDESANWALTSCHAFT auf die Gemeinsame Resolution zur Annexion der Hawaiischen Inseln durch die Vereinigten Staaten vom 7. Juli 1898 ist klar fehlerhaft, und zwar in vier grundsätzlichen Punkten. *Erstens*, Gesetze des Kongresses der Vereinigten Staaten sind keine Quelle des Völkerrechts; *zweitens*, es gibt keine Vereinbarung zwischen den Vereinigten Staaten und der selbst-erklärten Republik Hawai‘i, die nach dem Recht der USA oder nach dem Völkerrecht erkenntlich wäre; *drittens*, die Vereinigten Staaten sind kraft der Doktrin der Inneren Rechtskraftwirkung [‚Collateral Estoppel‘] daran gehindert, die Existenz des Hawaiischen Königreiches als Staat zu leugnen; und *viertens*, die BUNDESANWALTSCHAFT anerkennt in ihrem Bericht die Kontinuität des

Hawaiischen Königreichs entsprechend dem Hawaiisch-Schweizerischen Vertrag von 1864.

a. Gesetze des Kongresses der Vereinigten Staaten sind keine Quelle des Völkerrechts.

6. Quellen des Völkerrechts sind, in Rangfolge: Internationale Übereinkünfte, internationales Gewohnheitsrecht, allgemeine Rechtsgrundsätze wie sie von den Kulturvölkern anerkannt werden, und richterliche Entscheidungen sowie die Lehrmeinungen der fähigsten Völkerrechtler der verschiedenen Nationen (Artikel 38, Statut des Internationalen Gerichtshofs). Die Gesetzgebung eines jeden unabhängigen Staates, einschliesslich der Vereinigten Staaten von Amerika und ihres Kongresses, ist keine Quelle des Völkerechts, sondern stattdessen eine Quelle nationalen Rechts des Staates, dessen Legislative solche Gesetze beschlossen hat. In *The Lotus* hat der internationale Gerichtshof folgendes festgestellt: "Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State (*Lotus*, PCIJ ser. A no. 10 (1927) 18)." J. Crawford zufolge kann eine Beeinträchtigung dieses Prinzips nicht vermutet werden, was er als Lotus-Vermutung bezeichnet (Crawford, *The Creation of States in International Law* 41-42 (2nd ed. 2006)).
7. Da Gesetzgebung des Kongresses, ob aufgrund eines Statuts oder einer Gemeinsamen Resolution, keine extraterritoriale Wirkung ausübt, ist dies keine Quelle des Völkerrechts, welche "Beziehungen zwischen unabhängigen Staaten reguliert ("which 'governs relations between independent States' (*Lotus*, 18))." Der Oberste Gerichtshof der Vereinigten Staaten hat dieses Prinzip immer beherzigt. In *United States v. Curtiss Wright Export Corp*., 299 U.S. 304, 318 (1936), erklärte der Oberste Gerichtshof der USA: "Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understanding and compacts, and the principles of international law." In *The Apollon,* 22 U.S. 362, 370 (1824), befand der Oberste Gerichtshof: "The laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."
8. Falls die Schweiz also behaupten sollte, nationales Recht hätte die Fähigkeit, einen fremden Staat zu annektieren, so käme dies einer Anerkennung der vorgeblichen Annexion Luxemburgs durch Deutschland während des 2.

Weltkriegs und der vorgeblichen Annexion Kuwaits durch Irak während des Golfkriegs gleich. Des weiteren sind die Vereinigten Staaten (ebenso wie die Schweiz) davon ausgeschlossen, von ihrer illegalen Handlung zu profitieren, getreu dem völkerrechtlichen Prinzip *ex iniuria jus non oritur*—‚aus Unrecht entsteht kein Recht,' was heute als *jus cogens* anerkannt ist. I. Brownlie schreibt dazu: "When elements of certain strong norms (the *jus cogens*) are involved, it is less likely that recognition and acquiescence will offset the original illegality (Brownlie, *Principles of Public International Law* 80 (4th ed. 1990))."

b. Es existiert keine Übereinkunft zwischen den Vereinigten Staaten und der selbst-erklärten Republik Hawai'i.

9. In zwischenstaatlichen Beziehungen ist der Präsident das einzige Organ der Bundesregierung der Vereinigten Staaten, nicht der Kongress; und es ist der Präsident, der internationale rechtliche Übereinkommen abschliessst. "He makes treaties with the advice and consent of the Senate, but he alone negotiates. Into the field of negotiations the Senate cannot intrude, and Congress itself is powerless to invade it (*United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936))." Die Vereinigten Staaten anerkennen zwei Arten von internationalen Übereinkommen – Verträge und Exekutive Übereinkommen ['executive agreements']. Ein Vertrag bedeutet "a compact made between two or more independent nations with a view to the public welfare (*Altman & Co. v. United States*, 224 U.S. 583, 600 (1912)). "
10. Gemäss dem Recht der Vereinigten Staaten umfassen Verträge, wie sie in Artikel II, §2 der Bundesverfassung [Federal Constitution] definiert sind, auch Exekutive Übereinkommen, die keine Ratifizierung seitens des Senats oder eine Zustimmung seitens des Kongresses benötigen (*United States v. Belmont,* 301 U.S. 324, 330 (1937); *United States v. Pink*, 315 U.S. 203, 223 (1942); und *American Insurance Ass. v. Garamendi*, 539 U.S. 396, 415 (2003)). In *Weinberger v. Rossi*, 456 U.S. 25 (1982) definierte der Oberste Gerichthof gemäss der Verfassung sowohl Verträge als auch Exekutive Übereinkommen als Verträge, und in *Altman & Co. v. United States,* 224 U.S. 583 (1912) definierte der Oberste Gerichtshof Exekutive Übereinkommen als Verträge.
11. Die Behauptung der BUNDESANWALTSCHAFT, dass die sogenannte Republik Hawai'i der Gemeinsamen Resolution [Joint Resolution] bezüglich der Annexion zustimmte, impliziert die Existenz einer internationalen Übereinkunft, ob in Form eines Vertrags oder einer Exekutiven Übereinkunft. Es existiert kein solches Übereinkommen. Diese Behauptung einer Zustimmung der sogenannten Republik Hawai'i lässt sich vermutlich auf die Gemeinsame Resolution selbst zurückführen, wo es heisst: "Whereas the government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian islands and their dependencies (30

U.S. Stat. 750 (1898)).” Eine Gemeinsame Resolution stellt keinen Vertrag zwischen zwei Staaten dar, sonderen ist ein Übereinkommen zischen dem Repräsentantenhaus und dem Senat des Amerikanischen Kongresses.

12. Diese sogenannte Zustimmung bezog sich auf den Annexionsvertrag vom 16. Juni 1897, der in Washington, D.C., von der sogenannten Republik Hawai‘i und dem Präsidenten der Vereinigten Staaten William McKinley unterzeichnet wurde. Dieser Vertrag wurde aber vom Senat der Vereinigten Staaten nicht ratifiziert, und zwar auf Grund eines von Königin Lili‘uokalani eingereichten diplomatischen Protests und einer Petition von 21,269 Unterschriften hawaiischer Untertanen und Einwohner des Hawaiischen Königreichs, die sich gegen den Versuch einer Annexion durch Vertrag wandten, eine Tatsache, die Teil des Protokolls des Senats vom Dezember 1897 ist („War Crime Report,“ Abs. 5.10).
13. Die Gemeinsame Resolution wurde als Resolution des Repräsentantenhauses Nr. 259 am 4. Mai 1898 eingebracht, nachdem der Senat nicht genügend Stimmen zusammenbringen konnte, um den sogenannten Annexionsvertrag zu ratifizieren. Während der Debatte im Senat wandte sich eine Reihe von Senatoren gegen die Theorie, dass eine Gemeinsame Resolution es vermöge, eine Annexion von fremdem Territorium vorzunehmen. Senator Augustus Bacon erklärte: “The proposition which I propose to discuss is that a measure which provides for the annexation of foreign territory is necessarily, essentially, the subject matter of a treaty, and that the assumption of the House of Representatives in the passage of the bill and the proposition on the part of the Foreign Relations Committee that the Senate shall pass the bill, is utterly without warrant in the Constitution (31 Cong. Rec. 6145 (June 20, 1898)).” Senator William Allen erklärte: “A Joint Resolution if passed becomes a statue law. It has no other or greater force. It is the same as if it would be if it were entitled ‘an act’ instead of ‘A Joint Resolution.’ That is its legal classification. It is therefore impossible for the Government of the United States to reach across its boundary into the dominion of another government and annex that government or persons or property therein. But the United States may do so under the treaty making power (*Id.,* 6636 (July 4, 1898)).” Senator Thomas Turley erklärte: “The Joint Resolution itself, it is admitted, amounts to nothing so far as carrying any effective force is concerned. It does not bring that country within our boundaries. It does not consummate itself (*Id.,* 6339 (Juni 25, 1898)). “
14. In einer Rede im Senat, wobei die Senatoren wussten, dass der Vertrag von 1897 nicht ratifiziert worden war, erklärte Senator Stephen White: “Will anyone speak to me of a ‘treaty’ when we are confronted with a mere proposition negotiated between the plenipotentiaries of two countries and ungratified by a tribunal – this Senate – whose concurrence is necessary? There is no treaty; no one can reasonably aver that there is a treaty. No treaty can exist unless it has attached to it not merely acquiescence of those from whom it emanates as a proposal. It must be accepted – joined in by the other party. This has not been done. There is therefore, no treaty (*Id.,* Appendix, 591 (Juni 21, 1898)).” Senator Allen bemängelte auch, dass die Gemeinsame

Resolution ein Kontrakt oder ein Übereinkommen mit der sogenannten Republik Hawai‘i war. Er erklärte: “Whenever it becomes necessary to enter into any sort of compact or agreement with a foreign power, we cannot proceed by legislation to make that contract (*Id.,* 6636 (July 4, 1898)).”

15. Westel Willoughby, ein Verfassungsexperte der Vereinigten Staaten, äusserte sich folgendermassen: “The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act... Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force – confined in its operation to the territory of the State by whose legislature it is enacted (“War Crimes Report,” Abs. 5.9).” Dies wäre analog zu der Vorstellung, die Vereinigten Staaten könnten durch den Beschluss einer Gemeinsamen Resolution einseitig die Schweiz annektieren. Des Weiteren hat 1988 der Bundesjustizminister [‘Attorney General’] der Vereinigten Staaten diese Kongressprotokolle begutachtet und folgendes festgestellt: „Ungeachtet dieser verfassungsrechtlichen Beanstandungen verabschiedete 1898 der Kongress die Gemeinsame Resolution, und Präsident McKinley unterzeichnete die Massnahme. Dennoch ist es natürlich fragwürdig, ob diese Handlung das verfassungsmässige Recht des Kongresses demonstriert, Territorium zu erwerben (“Notwithstanding these constitutional objections, Congress approved the joint resolution and President McKinley signed the measure in 1898. Nevertheless, whether this action demonstrates the constitutional power of Congress to acquire territory is certainly questionable (D. Kmiec, *Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea*, 12 Op. Off. Legal Counsel 238, 252 (1988))“).” Der Justizminister [‚Attorney General‘] kam dann zu folgendem Schluss: „Es ist daher unklar, welches verfassungsmässige Recht der Kongress ausübte, als er sich Hawai‘i durch eine Gemeinsame Resolution aneignete (“It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution (Id.)”).“
16. Die sogenannte Republik Hawai‘i war die Nachfolgerin einer provisorischen Regierung, die sich illegalerweise am 17. Januar 1893 infolge einer Intervention der Vereinigten Staaten etablierte (*Id.,* Abs. 4.8). Eine Untersuchung des Präsidenten stellte fest, dass die Vereinigten Staaten die hawaiische Regierung illegalerweise gestürzt hatten und kam zu dem Schluss, dass die provisorische Regierung „weder eine Regierung *de facto* noch *de jure* (“neither a government *de facto* nor *de jure* (*Id.,* Abs. 4.2)“),” sondern selbst-eklärt war.
17. Als die provisorische Regierung am 4. Juli 1894 ihren Namen in „Republik Hawai‘i“ umänderte, erwarb sie sich keine weitere Autorität und verblieb selbst-erklärt (*Id.,* Abs. 9.5). Dies wurde vom 103. Kongress in einer Gemeinsamen Resolution anerkannt: *Joint resolution to acknowledge the 100th anniversary of the January 17 overthrow of the Kingdom of Hawai‘i, and to offer an apology to the Native Hawaiians on behalf of the United States*

for the overthrow of the Kingdom of Hawai'i (107 U.S. Stat. 1510 (1993)). Diese Gemeinsame Resolution erklärte: *"Whereas,* through the Newlands Resolution, the self-declared Republic of Hawai'i ceded sovereignty over the Hawaiian Islands to the United States (Id.)."

18. Selbst-erklärt oder 'self-declared', bedeutet "according to ones's own testimony or admission (*Collins English Dictionary*)." Selbst-erklärt bedeutet ebenfalls selbst-proklamiert ('self-proclaimed'), definiert als "giving yourself a particular name, title, etc., usually without any reason or proof that would cause other people to agree with you (*Merriam-Webster Dictionary*)." Ein selbst-deklariertes Gebilde ist keine Regierung eines vom Völkerrecht anerkannten Staats, ausgenommen dass es diesen Status entweder *de facto* oder *de jure* angenommen hat. Ein selbst-erklärtes Gebilde konnte infolgedessen nicht die Souveränität des hawaiischen Staates an die Vereinigten Staaten übergeben.

c. Die Schweiz anerkennt die Kontinuität des Hawaiischen Königreichs als Staat.

19. Am 22. Januar 2015 machte BESCHWERDEFÜHRER Gumapac seine Rechte als Hawaiischer Untertan geltend, entsprechend Art. 1 des Hawaiisch-Schweizerischen Vertrags von 1864, in welchem es heisst: „Die Hawaiianer werden in jedem Kanton der Schweizerischen Eidgenoßenschaft, in Beziehung auf ihre Personen und ihr Eigenthum, auf dem nämlichen Fuße und zu den gleichen Bedingungen aufgenommen, wie die Angehörigen der andern Kantone gegenwärtig zugelassen werden oder es in Zukunft werden könnten." Die BUNDESANWALTSCHAFT hielt dies in ihrem Bericht vom 3. Februar 2015 fest und kam ausserdem richtigerweise zu dem Schluss, dass der Hawaiisch-Schweizerische Vertrag von 1864 nicht gekündigt wurde.
20. Letztgenannter Vertrag ist eine internationale Übereinkunft zwischen zwei souveränen und unabhängigen Staaten durch deren Regierungen, nämlich das Hawaiische Königreich und die Schweizerische Eidgenossenschaft. Beide Staaten sind Völkerrechtssubjekte, und Crawford schreibt dazu: "There is a strong presumption that the State continues to exist, with its rights and obligations, despite revolutionary changes in government, or despite a period in which there is no, or no effective, government. Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State (Crawford, 34; vgl. hierzu auch "War Crime Report," Abs. 7.1-7.14)."
21. Die Schweizer Regierung, duch ihre BUNDESANWALTSCHAFT, anerkennt die Kontinuität des Hawaiische Königreichs in seiner Eigenschaft als Vertragspartner, ungeachtet des illegalen Sturzes seiner Regierung durch die Vereinigten Staaten am 17. Januar 1893. Diese Anerkennung seitens der BUNDESANWALTSCHAFT untergräbt seine Behauptung, dass ein 1898 vom Kongress erlassenes nationales Gesetz der Vereinigten Staaten Hawai'i, einen fremden Staat, hätte annektieren und amerikanische Souveränität über die Hawaiischen Inseln etablieren können. Im Weiteren muss die Erklärung

der BUNDESANWALTSCHAFT in ihrem Bericht, dass die Schweiz Hawai‘i offiziell als Teil der Vereinigten Staaten anerkennt und ein Konsulat in Honolulu unterhält, als direkte Verletzung des Hawaiisch-Schweizerischen Vertrags von 1864 ausgelegt werden. Das schweizerische Konsulat wurde in Honolulu nicht gemäss des Artikels VII des Vertrags eingerichtet, der festhält: „Es steht den beiden kontrahirenden Staaten frei, Konsuln, Vize-Konsuln oder Konsularagenten zum Residiren auf den Gebieten des andern Staates zu ernennen. Bevor aber einer dieser Beamten als solcher handeln kann, muß derselbe in üblicher Form von der Regierung, bei welcher er bestellt ist, anerkannt und angenommen sein. Jeder der beiden kontrahirenden Theile kann, je nachdem er es für nöthig erachtet, bestimmte Pläze vorbehalten, welche zu Sizen für Konsularbeamte durch den andern Theil nicht bezeichnet werden dürfen.“

22. Zusätzlich wurde das schweizerische Konsulat in Honolulu aufgrund des Vertrags zwischen den Vereinigten Staaten und der Schweiz etabliert, eine Tatsache, die den Hawaiisch-Schweizerischen Vertrag direkt verletzt und deswegen einen völkerrechtswidrigen Akt darstellt, wie er in den *Responsibilities of States for Internationally Wrongful Acts* (2001) der Vereinten Nationen definiert wird. Artikel 2 lautet: “There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.” Artikel 16 lautet: “A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstance of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.”

d. Die Vereinigten Staaten sind kraft der Doktrin der Inneren Rechtskraftwirkung [‚Collateral Estoppel‘] daran gehindert, die Existenz des Hawaiischen Königreiches als Staat zu leugnen.

23. Am 5. März 2015, während einer Zeugenanhörung im ‚Second Circuit Court for Criminal Proceedings‘ [Bezirksgericht für Straffälle] im Prozess *State of Hawai‘i v. English* (CR 14-1-0819) und *State of Hawai‘i v. Dudoit* (CR 14-1-0820) nahm der Gerichtshof offizielle gerichtliche Notiz richterlicher Tatsachen [‘judicial notice of adjudicative facts,‘ eine juristische Praxis im angelsächsischen Rechtssystem], die zum Schluss führen, dass das Hawaiische Königreich weiterhin existiert (*Hearing Transcript*, Exhibit „4“ of Attachment „1“). Diese richterlichen Tatsachen sind enthalten in einer Kurzdarstellung [‚brief‘], verfasst vom Bevollmächtigten der BESCHWERDEFÜHRER, betitelt „The Continuity of the Hawaiian Kingdom and the Legitimacy of the *acting* government of the Hawaiian Kingdom (Exhibit „1“ of Attachment „1“).
24. Im angelsächsichen Rechtssystem ist eine offizielle gerichtliche Notiz [‘judicial notice’] ein “Vorgang, durch den ein Gericht... das Vorhandensein

und die Wahrheit bestimmter Fakten anerkennt, die aufgrund ihrer Natur nicht eigentlich Gegenstand von Zeugenaussagen sind..., z. B. Gesetze des Staates, das Völkerrecht und historische Ereignisse ("act by which a court… recognizes the existence and truth of certain facts, which from their nature, are not properly the subject of testimony,… e.g. the laws of the state, international law, historical events (*Black's Law Dictionary* 848 (6th ed. 1990)").

25. Seit 1994 kennt der ‚Hawai'i Intermediate Court of Appeal' [Mittlerer Appelationsgerichtshof von Hawai'i] zwei Präzedenzfälle für diejenigen, die die Jurisdiktion der Vereinigten Staaten über Hawai'i im Zuge der Entschuldigung des Kongressses der Vereinigten Staaten von 1993 für den illegalen Sturz der Regierung des Hawaiischen Königreichs infrage stellen, nämlich *State of Hawai'i v. Lorenzo*, 77 Haw. 219 (1994) und *Nishitani v. Baker*, 82 Haw. 281 (1996). Diese beiden Gerichtsfälle hielten fest, dass es dem Beschuldigten obliegt, „die tatsächliche (oder gesetzliche) Grundlage vorzulegen, dass das Königreich als Staat existiert („[to provide] factual (or legal) basis that the Kingdom exists as a state")." Die Weigerung des Richters, die strafrechtlichen Anschuldigungen zurückzuweisen, nachdem er von der gerichtlichen Feststellung Notiz genommen hatte, stellt einen Irrtum dar, und ein ‚writ of mandamus' [gerichtlichen Befehl auf Vornahme einer Handlung] wurde beim Obersten Gerichtshof von Hawai'i am 27 März 2015 eingereicht, mit Aktenzeichen SCPW-15-0000236 (Attachment "1"). Obwohl das Gericht sich weigerte, die Anklage abzuweisen, wird durch die Tatsache, dass das Gericht offizielle gerichtliche Notiz der weiterbestehenden Existenz des Hawaiischen Königreichs als Staat nahm, dank der Doktrin der Inneren Rechtskraftwirkung [‚Collateral Estoppel'] verhindert, dass der sogenannte Bundesstaat Hawai'i und die Vereinigten Staaten das verleugnen, von dem das Gericht offiziell Notiz nahm.
26. Der sogenannte Staat Hawai'i ist selbst-erklärt und besitzt weder eine Autorität *de facto* noch eine solche *de jure* als Regierung (‚War Crimes Report,' Abs. 12.2). Er ist der Nachfolger der soganannten provisorischen Regierung, die durch die Intervention vom 17. Januar 1893 etabliert wurde und sich als Regierung ausgab. Die BUNDESANWALTSCHAFT liegt richtig in ihrer Feststellung, dass, wenn man einen Okkupationszustand annimmt, die Besatzungsmacht autorisiert ist, im völkerrechtlich vorgegebenen Rahmen Abgaben, Zölle und Gebühren zu erheben. Indessen kann eine solche Erhebung von Steuern und Abgaben nur durch eine von den Vereinigten Staaten gemäss ‚United States Army Field Manual 27-5' und ‚27-10' etablierte Militärregierung nach dem Steuerrecht des Hawaiischen Königreichs getätigt werden, und nicht durch den sogenannten Bundesstaat von Hawai'i und die Bundessteuerbehörde der USA [‚Internal Revenue Service'] nach amerikanischem Steuerrecht.
27. Die Behauptung der BUNDESANWALTSCHAFT, die gegen Herrn Ackermann als ehemaligen Vorsitzenden der Deutschen Bank gerichteten Vorwürfe des BESCHWERDEFÜHRERS Gumapac wegen der Verwertung eines pfandbelasteten Grundstücks seien rein zivilrechtlicher Natur ist falsch, denn ein pfandbelastetes Grundstück kann nicht verwertet werden, wenn es

Mängel im Eigentumserwerbstitel des Hypothekenschuldners gibt. Diese Mängel sind auf die Tatsache zurückzuführen, dass das öffentliche Notariat und Grundbuchregisteramt des sogenannten Bundesstaats Hawai‘i, der weder de facto noch de jure existiert, nicht rechtmässig sind. Nach hawaiischem Recht muss die Ausführung eines Übergabevertrags, oder einer hypothekarischen Belastung zunächst von „der ausführenden Partei vor dem Grundbuchregisterführer, seinem Beauftragten, oder einem Richter eines Registergerichts oder einem öffentlichen Notar dieses Königreichs bescheinigt (“[acknowledged by] the party executing the same, before the Registrar of Conveyances, or his agent, or some judge of a court of record or notary public of this Kingdom (Hawaiian Kingdom Compiled Laws, §1255),” und dann im Grundbuchregisteramt [‘Bureau of Conveyances’] erfasst werden, wo “alle Kaufverträge, Pachtverhältnisse von über einem Jahr Länge, oder andere Übertragungen von Immobilien innerhalb diese Königreiches erfasst werden müssen (“all deeds, leases for term of more than one year, or other conveyance of real estate within this Kingdom shall be recorded in the office of the Registrar of Conveyances (*Id.*, §1262)“).”

28. Des Weiteren kann die Deutsche Bank in Hawai‘i gar nicht geschäftlich tätig werden, denn sie ist nicht nach hawaiischem Recht als ausländisches Unternehmen registriert. Nach dem *Act Relating to Corporations and Incorporated Companies Organizing under the Laws of Foreign Countries and Carrying on Business in this Kingdom*, “[muss] jede nach ausländischem Recht gegründete Firma oder Kapitalgesellschaft, die bestrebt ist, in diesem Königreich gesschäftlich tätig zu werden und dazu hier Immobilien in Besitz zu nehmen, zu besitzen und zu verkaufen, im Inneministerium folgendes hinterlegen: 1. eine beglaubigte Kopie der Satzung oder Gründungsurkunde der fraglichen Firma oder Kapitalgesellschaft. 2. die Namen der leitenden Angestellten dieser. 3. den Namen einer Person, an die Rechtsnotizen oder Gerichtsentscheide dieses Königreichs zugestellt werden können. 4. einen Jahresbericht, fällig am 1. Juli jeden Jahres, in dem die Aktiven und Passiven des Unternehmens innerhalb dieses Königreichs aufgeführt sind. 5. eine beglaubigte Kopie der Geschäftsordnung der Firma oder Kapitalgesellschaft (“Every corporation or incorporated company formed or organized under the laws of any foreign State, which may be desirous of carrying on business in this Kingdom and to take, hold and convey real estate therein, shall file in the office of the Minister of the Interior: 1. A certified copy of the charter or act of incorporation of such corporation or company. 2. The names of the officers thereof. 3. The name of some person upon whom legal notices and process from the courts of this Kingdom may be served. 4. An annual statement of the assets and liabilities of the corporation or company in this Kingdom on the first day of July in each year. 5. A certified copy of the by-laws of such corporation or company (Id., p. 473)”).”
29. Die BESCHWERDEFÜHRER liefern hiermit den Beweis und die rechtlichen Folgerungen um die Nichthandnahmeverfügung der BUNDESANWALTSCHAFT zurückzuweisen, und beide BESCHWERDEFÜHRER erhalten ihren Anspruch aufrecht, dass gegen sie

Kriegsverbrechen begangen wurden und stützen sich dabei auf die Beweise für den Zeitraum von 2006-2012, die in ihren Strafanzeigen dargelegt wurden. Die Vereinigten Staaten haben keinerlei Anrecht oder Souveränität über die Hawaiischen Inseln. Die Hawaiischen Inseln stehen demnach unter einer illegalen und langwierigen Okkupation seit dem Spanisch-Amerikanischen Krieg von 1898, was eine erstaunliche Ähnlichkeit aufweist mit der deutschen Besetzung von Luxemburg während des Ersten Weltkriegs von 1914-1918, und während des Zweiten Weltkriegs von 1940-1945 (‚War Crime Report,' Abs. 15,19).

B. Klagebegehren

Die BESCHWERDEFÜHRER verlangen durch ihren Bevollmächtigten vom Ehrenwerten Gericht, dass ihrem Einspruch entsprochen wird und dass die BUNDESANWALTSCHAFT aufgefordert wird, die in der Strafanzeige von den BESCHWERDEFÜHRERN angeschuldigten mutmasslichen Straftäter gerichtlich zu belangen.

Datiert: Honolulu, Hawai'i, den 31. März 2015

Dr. DAVID KEANU SAI
Bevollmächtigter der Beschwerdeführer

Attachment “1”

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

KAIULA KALAWE ENGLISH and ROBIN WAINUHEA DUDOIT, Petitioners, vs. THE HONORABLE JOSEPH E. CARDOZA, CIRCUIT JUDGE, SECOND JUDICIAL CIRCUIT Respondent.	PETITION FOR WRIT OF MANDAMUS TO THE SECOND CIRCUIT, COUNTY OF MAUI, STATE OF HAWAI'I

PETITION FOR WRIT OF MANDAMUS TO THE SECOND JUDICIAL CIRCUIT, COUNTY OF MAUI, STATE OF HAWAI'I

Dexter K. Kaiama 4249
111 Hekili Street, Suite A1607
Kailua, Hawai'i 96734
Phone no. (808) 284-5675

Attorney for Petitioners

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

KAIULA KALAWE ENGLISH and ROBIN WAINUHEA DUDOIT, Petitioners, vs. THE HONORABLE JOSEPH E. CARDOZA, CIRCUIT JUDGE, SECOND JUDICIAL CIRCUIT Respondent.	)	PETITION FOR WRIT OF MANDAMUS TO THE SECOND CIRCUIT, COUNTY OF MAUI, STATE OF HAWAI‘I

PETITION FOR WRIT OF MANDAMUS TO SECOND JUDICIAL CIRCUIT, COUNTY OF MAUI, STATE OF HAWAI‘I

The Petitioners Kaiula Kalawe English and Robin Wainuhea Dudoit, by and through their counsel, respectfully petitions the Court to issue a writ of mandamus directing the Honorable Joseph E. Cardoza of the Circuit Court of the Second Judicial Circuit to immediately grant the motions to dismiss criminal complaint CR 14-1-0819, *State v. English*, and criminal complaint CR 14-1-0820, *State v. Dudoit*, filed on February 6, 2015 with an evidentiary hearing held March 5, 2015.

This motion is made pursuant to Hawai‘i Rules of Appellate Procedure Rules 21 and 27.

I. STATEMENT OF FACTS:

1. On November 17, 2014 an indictment and bench warrant was issued against Petitioners Kaiula Kalawe English and Robin Wainuhea Dudoit for two counts of robbery in the second degree, one count of unauthorized entry into a motor vehicle in the first degree, one count of terroristic threatening in the first degree, and one count of harassment.
2. On December 18, 2015, Petitioners were arraigned and both pleaded not guilty to all counts.

3. On February 10, 2015 Petitioner English filed a motion to dismiss criminal complaint pursuant to HRPP 12(b)(1); memorandum in support of motion; declaration of David Keanu Sai, Ph.D.; Exhibits "1-8"; motion for hearing motion; certificate of service (filed ex officio in 1st Circuit on 02/06/15). For the purposes of this petition for mandamus, attached herein as Exhibit "1" is Petitioner English's motion to dismiss, memorandum in support of motion, and Dr. Sai's declaration with exhibits "1-2," excluding exhibits "3-8."
4. On February 10, 2015 Petitioner Dudoit filed a joinder in defendant English's motion to dismiss criminal complaint (CR 14-1-0819) pursuant to HRPP 12(b)(1), filed February 6, 2015; certificate of service (filed ex officio in 1st Circuit on 02/06/15). Attached herein as Exhibit "2" is Petitioner Dudoit's joinder.
5. On February 27, 2015, Petitioner English filed a supplemental declaration of counsel in support of defendant English's motion to dismiss criminal pursuant to HRPP 12(b)(1) filed February 6, 2015; Exhibit "A"; certificate of service (filed ex officio in 1st Circuit on 02/27/15).
6. On March 2, 2015, the prosecution filed two identical memorandums in opposition to Petitioners' motion to dismiss criminal complaint pursuant to HRPP 12(b)(1); certificate of service. Attached herein as Exhibit "3" is the prosecution's memorandum in opposition to Petitioner English's motion to dismiss.
7. In rebuttal to the prosecution's claim in its memorandum in opposition, Petitioners are not claiming immunity from prosecution, but rather challenging the subject matter jurisdiction of the court.
8. An evidentiary hearing was held on Petitioners' motion to dismiss on March 5, 2015. Attached herein as Exhibit "4" is the transcript of the evidentiary hearing.
9. At the evidentiary hearing, David Keanu Sai, Ph.D., a Hawai'i political scientist, was received as an expert witness for the defense in support of Petitioners' motion to dismiss (Exhibit "4," p. 13, ll. 24-25; p. 14, ll. 1). The

Court recognized Dr. Sai as an expert on "the continuity of the Hawaiian State under international law." (*Id*., p. 13, ll. 7-8).

10. At no time did the prosecution object to the expert testimony of Dr. Sai who opined, "the Court would not have subject matter jurisdiction as a result of international law (*Id*., p. 14, ll. 14-15);" and "the Hawaiian state continues to exist under international law (*Id*., p. 24, ll. 14-15)."
11. When asked by the Court if there are any questions, the prosecution responded, "Your Honor, the State has no questions of Dr. Sai. Thank you for his testimony. One Army officer to another, I appreciate your testimony (*Id*., p. 33, ll. 15-17)." In his testimony, Dr. Sai stated he was a retired Army captain.
12. Defense counsel summed up Petitioners' argument by stating, "We have provided the courts now with a factual and legal basis to conclude that the Hawaiian Kingdom continues to exist. Because we've met that burden under Lorenzo, we respectfully submit that the State has failed to meet its burden that this Court has jurisdiction under Nishitani versus Baker (*Id*., p. 34, ll. 9-14)."
13. Instead of providing an evidential basis for concluding that the court has subject matter jurisdiction by objecting to the opinion of Dr. Sai or otherwise, the prosecution stated, "…the case law is fairly clear on this, your Honor. This isn't a new argument. This isn't a novel argument. Courts have ruled that basically regardless of the legality of the overthrow of the Hawaiian Kingdom, Hawaii, as it is now, is a lawful, lawful state with a lawful court system and a lawful set of laws (*Id*., p. 37, ll. 19-25)." Case law is not evidence and cannot be used to prove the court has jurisdiction beyond a reasonable doubt.
14. Defense counsel responded, "Lorenzo is still the prevailing case. So it still requires us to present…relevant factual and legal evidence for the Court to conclude that the Hawaiian Kingdom continues to exist. We've done that now (*Id*., p. 40, ll. 10-16)."
15. In its pleading and at the evidentiary hearing, defense counsel requested judicial notice of adjudicative facts and laws pursuant to Hawai'i Rules of Evidence Rules 201 and 202 as stipulated in Petitioners' memorandum in

support of motion to dismiss (*Id*., p. 42, ll. 15-20). Included in the list of international treaties and case law to be judicially noticed was Dr. Sai's expert memorandum. Defense counsel stated, "Finally, I did ask the Court to take judicial notice of Dr. Sai's expert memorandum, which was attached as an exhibit." (*Id*., p. 44, ll. 1-6)." Defense counsel's reference to an exhibit is exhibit "2" of Dr. Sai's declaration "The Continuity of the Hawaiian State and the Legitimacy of the *acting* Government of the Hawaiian Kingdom."

16. When the court asked, "What's the prosecution's position? (*Id*., p. 44, ll. 13-14)." The prosecution responded, "No objection, your Honor (*Id*., p. 44, ll. 15)." The court then stated, "there being no objection, the Court will take judicial notice as requested (*Id*., p. 44, ll. 16-21)."
17. After the taking of judicial notice of all evidence requested in Petitioners' memorandum in support of the motion to dismiss, the Court stated, "And having considered all of that, the Court at this time is going to deny the motion and joinder to dismiss the criminal complaint in these cases (*Id*., p. 44, ll. 22-24)."

II. ISSUES PRESENTED AND RELIEF SOUGHT

A. Issues Presented

1. Judge Cardoza's refusal to grant Petitioners' motion to dismiss after the Court took judicial notice of the evidence—without objection by the prosecution, that the Hawaiian Kingdom continues to exist as a state stands in violation of common law. The controlling precedent cases for defendants who challenge the Court's jurisdiction—whether personal or subject matter, are *State v. Lorenzo*, 77 Haw. 219 (1994) and *Nishitani v. Baker*, 82 Haw. 281 (1996). The prosecution acknowledges these precedent cases in its memorandum in opposition filed with the Court on March 2, 2015.
2. Judge Cardoza's refusal to grant Petitioners' motion to dismiss also stands in violation of Hawai'i's plain error doctrine. The Hawai'i Supreme Court has held that it "will apply the plain error standard of review to correct errors which seriously affect the fairness, integrity, or public reputation of judicial proceedings, to serve the ends of justice, and to prevent the denial of

fundamental rights." See *State v. Miller*, 122 Haw. 92, 100, 223 P.3d 157, 165 (2010) (citing *State v. Sawyer*, 88 Haw. 325, 330, 966 P.2d 637, 642 (1998)). "The due process guarantee of the…Hawaii constitution[] serves to protect the right of an accused in a criminal case to a fundamentally fair trial." See *State v. Matafeo*, 71 Haw. 183, 185, 787 P.2d 671, 672 (1990).

3. In *Lorenzo*, the Hawai'i Intermediate Court of Appeals (ICA) responded to Defendant's claim that the First Circuit Court in criminal proceedings lacked jurisdiction, by stating "it was incumbent on Defendant to present evidence supporting his claim [citation omitted]. Lorenzo has presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature." In *Baker*, the ICA clarified the standard for invoking a defense that the court's lack of jurisdiction, by stating, "Because the defendant had 'presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature,' we determined that the defendant had failed to meet his burden under HRS ß 701-115(2) (1993) [HRS ß 701-115(2) (1993) provides in relevant part: 'No defense may be considered by the trier of fact unless evidence of the specified fact or facts has been presented.'] of proving his defense of lack of jurisdiction [citation omitted]." Furthermore, the ICA clarified that the defendant's "burden of proving his or her defense of lack of jurisdiction may have generated some confusion. HRS ß 701-114(1) (c) (1993) specifically provides that in a criminal case, a defendant may not be convicted unless the State proves beyond a reasonable doubt 'facts establishing jurisdiction.' The burden of proving jurisdiction thus clearly rests with the prosecution [citation omitted]."
4. Ten years since *Lorenzo*, the ICA explicitly affirmed "the relevant precedent stated in *Nishitani v. Baker* [citation omitted], and *State v. Lorenzo* [citation omitted]." See *State v. Fergerstrom*, 106 Haw. 43, 55; 101 P.3d 652, 664 (2004). Since *Lorenzo* and *Baker*, the defenses that the court lacks jurisdiction were consistently denied because defendants "presented no factual (or legal) basis for concluding that the Kingdom exists as a state." See *State v. Lorenzo*,

77 Haw. 219, 883 P.2d 641 (App. 1994); *State v. French*, 77 Haw. 222, 883 P.2d 644 (App. 1994); *Nishitani v. Baker*, 82 Haw. 281, 921 P.2d 1182 (App. 1996); *State v. Lee*, 90 Haw. 130, 976 P.2d 444 (1999); and *State v. Fergerstrom*, 106 Haw. 43, 55, 101 P.3d 652, 664 (App. 2004), aff'd, 106 Haw. 41, 101 P.3d 225 (2004).

5. The prosecution's reliance on *State v. Kaulia*, 128 Haw. 479, 291 P.3d 377 (2013) as a precedent case is in error. See *Memo in Opp*., p. 11. In *Kaulia*, the Supreme Court merely reiterated the State's criminal jurisdiction pursuant to HRS ß 701-106 (1993) and did not change the precedent cases of *Lorenzo* and *Baker*. In fact, the Court restated the precedent cases in its decision, thereby acknowledging that the defendant did not provide any "factual (or legal) basis for concluding that the Kingdom exists as a state." See *id*. 487, and 385.
6. "Precedent is '[a]n adjudged case or decision of a court, considered as furnishing an example of authority for an identical or similar case afterwards arising or a similar question of law.' *Black's Law Dictionary* 1176 (6th ed.1990). The '[p]olicy of courts to stand by precedent and not to disturb settled point[s]' is referred to as the doctrine of *stare decisis*, (citation omitted), and operates 'as a principle of self-restraint…with respect to the overruling of prior decisions.' (citation omitted). The benefit of stare decisis is that it 'furnish[es] a clear guide for the conduct of individuals, to enable them to plan their affairs with assurance against untoward surprise; …eliminat[es] the need to relitigate every relevant proposition in every case; and…maintain[s] public faith in the judiciary as a source of impersonal and reasoned judgments.'" See *State v. Kekuewa*, 114 Haw. 411, 419; 163 P.3d 1148, 1156 (2007). Throughout its pleadings, Petitioners relied on the controlling precedents of *Lorenzo* and *Baker* "as a clear guide for the conduct of [their defense], to enable them to plan their affairs with assurance against untoward surprise."
7. The trial court's taking judicial notice of Dr. Sai's legal brief, "The Continuity of the Hawaiian State and the Legitimacy of the *acting* Government of the Hawaiian Kingdom," during the evidentiary hearing is an evidentiary ruling.

Where a party does not make a timely request to be heard on the issue of the court's taking judicial notice, that party has waived its right to appeal the propriety of taking judicial notice or the tenor of the matter noticed. See *In re Hertzel*, 329 B.R. 221, 2005 FED App. 0006P (B.A.P. 6th Cir. 2005). The prosecution is estopped from denying what was judicially noticed, because it made no objection to the Court's taking judicial notice after the Court clearly announced its intention on the record and provided an opportunity for the prosecution to respond. "[T]he effect of judicial notice is that facts are taken to be true unless rebutted." See *Application of Pioneer Mill Co*., 53 Haw. 496, 497, 497 P.2d 549, 550 (1972).

8. Judicial notice of Dr. Sai's legal brief was the Court taking notice of adjudicative facts pursuant to HRE Rule 201(b)(2), whereby a "judicially noticed fact must be one not subject to reasonable dispute in that it is…capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." "A fact is a proper subject for judicial notice if it is…easily verifiable. See *Almeida v. Correa*, 51 Haw. 594, 572, 464 P.2d 564, 605 (1970). Verification was obtained through expert testimony given by Dr. Sai under oath and unopposed by the prosecution "as to (1) the witness's qualification, (2) the subject to which the witness' expert testimony relates, and (3) the matter upon which the witness' opinion is based and the reasons for the witness' opinion (HRE Rule 702.1(a)).
9. Judicial notice of Dr. Sai's legal brief also has the effect of concluding the following salient facts, which are drawn from Dr. Sai's brief and expert testimony, to be indisputable, and therefore Petitioners have met their burden of providing a "factual (or legal) basis for concluding that the Kingdom exists as a state" pursuant to *Lorenzo* and *Baker*.
    a. The Hawaiian Kingdom existed in the nineteenth century as an internationally recognized independent and sovereign state. See Exhibit "1" (exhibit "2," Declaration of Dr. Sai), para. 3.1, quoting the dictum of the Permanent Court of Arbitration, *Larsen v. Hawaiian Kingdom*, 119 Int'l L. Rep. 566, 581 (2001).

b. The United States admitted to illegally aiding a small group of insurgents in the seizure of the Hawaiian Kingdom government, and entered into an executive agreement with Queen Lili'uokalani, through *exchange of notes*, to reinstate the Hawaiian government on December 18, 1893. See *id*., para. 3.5-3.6.

c. There is a presumption of continuity of an internationally recognized independent and sovereign state despite the absence of its government. See *id*., para. 2.4, quoting J. Crawford, *The Creation of States in International Law* 34 (2d. ed. 2006).

d. The United States did not comply with the executive agreement of reinstating the Hawaiian government and allowed its puppet government, which was neither *de facto* nor *de jure*, but self-declared, to continue in power. See *id*., para. 3.7.

e. Sole-executive agreements bind the President of the United States under international law for its faithful execution and also bind the President's successors in office. See *id*., quoting Q. Wright, *The Control of Foreign Relations*, 235 (1922).

f. The puppet government called the provisional government was re-named to the Republic of Hawai'i on July 4, 1894, which remained self-declared. See *id*., para. 6.4, quoting *Joint Resolution To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawai'i* (107 U.S. Stat. 1510).

g. In 1898, the United States Congress attempted and failed to annex the Hawaiian Islands by a *Joint Resolution to provide for annexing the Hawaiian Islands to the United States* (30 U.S. Stat. 750). See *id*., para. 3.11.

h. In 1900, the United States Congress attempted and failed to change the name of the so-called Republic of Hawai'i to the Territory of Hawai'i by *An Act To provide a government for the Territory of Hawai'i* (31 U.S. Stat. 141). See *id*., para. 3.12.

i. In 1959, the United States Congress attempted and failed to change the name of the Territory of Hawai‘i to the State of Hawai‘i by *An Act To provide for the admission of the State of Hawai‘i into the Union* (73 U.S. Stat. 4). See *id*.

j. Congressional legislation has no force and effect beyond the territorial borders of the United States, except by virtue of personal supremacy over its citizens abroad and criminal acts committed abroad under the *effects doctrine*. See *id*., para. 3.11, citing *United States v. Curtiss Wright Export Corp*., 299 U.S. 304, 318 (1936), and quoting Congressman T. Ball, 31 Cong. Rec. 5975 (1898), and G. Born, *International Civil Litigation in United States Courts* 493 (3rd. ed. 1996).

k. There is no evidence rebutting the presumption of continuity of the Hawaiian Kingdom as an independent and sovereign state under international law, and therefore the Hawaiian Kingdom continues to exist "as a state in accordance with recognized attributes of a state's sovereign nature." See *id*., in its entirety, citing *State v. Lorenzo*, 77 Haw. 219, 221; 883 P.2d 641, 643 (1994); see also expert testimony of Dr. Sai, *Transcripts*, p. 23, ll. 22-23.

l. The United States belligerently occupied the Hawaiian Islands on August 12, 1898 during the Spanish-American War, which did not transfer the sovereignty of the Hawaiian Kingdom to the United States. See *id*., para. 3.12, citing *Thirty Hogsheads of Sugar v. Boyle*, 13 U.S. 191 (1815); *United States v. Rice*, 17 U.S. 246 (1819); *and Flemming v. Page*, 50 U.S. 603 (1850); and quoting from United States Army Field Manual 27-10, section 358—*Occupation Does Not Transfer Sovereignty*.

m. According to customary international law, which was codified in 1899 and 1907 by the Hague Conventions, the occupying State, being the United States, is mandated to administer the laws of the occupied State, being the Hawaiian Kingdom. See *id*., para. 8.13, quoting E.

Feilchenfeld, *The International Economic Law of Belligerent Occupation* 8 (1942); and P. Dumberry, *The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continue as an Independent State under International Law*, in 2(1) Chinese J. of Int'l L. 655, 682 (2002).

n. Failure to administer the laws of the occupied State is a violation Article 43 of the 1907 Hague Convention, IV. See *id*., para. 8.14.

o. Failure to provide a fair and regular trial is a grave breach of Article 147 of the 1949 Geneva Convention, IV, and a war crime. See *id*., para. 10.5, citing A. Marschik, *The Politics of Prosecution: European National Approaches to War Crimes* in the Law of War Crimes: National and International Approaches 72, note 33 (1997), and quoting 18 U.S. Code §2441(c)(1); see also expert testimony of Dr. Sai, *Transcripts*, p. 29, ll. 11-17.

p. The United States ratified the 1907 Hague Conventions, and the 1949 Geneva Conventions. See *id*., p. 50, fn. 199, citing 36 U.S. Stat. 2277, and *Treaties and Other International Acts Series*, 3365.

10. By judicial notice the prosecution waived all arguments claiming the Court has subject matter jurisdiction, and furthermore has failed in its burden of proving "beyond a reasonable doubt 'facts establishing jurisdiction,'" pursuant to *Nishitani v. Baker,* 82 Haw. 281, 289, 921 P.2d 1182, 1190 (1996). "If a court lacks jurisdiction over the subject matter of a proceeding, any judgment rendered in that proceeding is invalid," *Bush v. Hawaiian Homes Comm'n*, 76 Haw. 128, 133, 870 P.2d 1272, 1277 (1994) (citation, internal quotation marks and brackets omitted).

11. The Petitioners have prevailed in its argument and the prosecution, on behalf of the State of Hawai'i, "cannot claim relief from the Circuit Court of the Second Circuit because the appropriate court with subject matter jurisdiction in the Hawaiian Islands is an Article II Court established under and by virtue of Article II of the U.S. Constitution in compliance with Article 43, 1907 Hague Convention IV (36 U.S. Stat. 2277). Article II Courts are Military

Courts established by authority of the President, being Federal Courts, which were established as 'the product of military occupation.' Military Courts are generally based upon the occupant's customary and conventional duty to govern occupied territory and to maintain law and order." See *Memo in Support of Motion to Dismiss*, p. 1; see also Exhibit "1" (exhibit "2," Declaration of Dr. Sai), para. 10.2; and Exhibit "4," p. 30, ll. 20-22, and p. 31, ll. 21-22.

B. Relief Sought

1. The Petitioners request that this Honorable Court grant it's request for a Writ of Mandamus directing Judge Joseph E. Cardoza to immediately dismiss criminal complaint CR 14-1-0819 against Petitioner Kaiula Kalawe English and criminal complaint CR 14-1-0820 against Petitioner Robin Wainuhea Dudoit with prejudice.

DATED: Honolulu, Hawai'i, March 27, 2015.

/s/ Dexter K. Kaiama
DEXTER K. KAIAMA
Attorney for Petitioners

DECLARATION OF DEXTER K. KAIAMA

I, DEXTER K. KAIAMA, declare under penalty of law that the following is true and correct.

1. I am counsel for Petitioners Kaiula Kalawe English and Robin Waiauhea Dudoit in the instant petition for writ of mandamus and make this declaration from personal knowledge unless otherwise so stated.
2. The documents attached as Exhibits 1-4 hereto, as listed below, are true and correct copies of documents filed in criminal complaint CR 14-1-0819, *State v. English*, and criminal complaint CR 14-1-0820, *State v. Dudoit*.

Document	Exhibit
Motion to Dismiss, Memorandum in Support of Motion, and Declaration of David Keanu Sai, Ph.D., Exhibits "1-2," excluding Exhibits "3-8" (dated February 6, 2015)	1
Joinder to Motion to Dismiss (dated February 6, 2015)	2
Memo in Opposition (dated March 2, 2015)	3
Transcript of Evidentiary Hearing (dated March 5, 2015)	4

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

DATED: Honolulu, Hawai'i, March 27, 2015.

/s/ Dexter K. Kaiama
DEXTER K. KAIAMA
Attorney for Petitioners

Exhibit “1”

Dexter K. Kaiama #4249
111 Hekili Street, Suite A1607
Kailua, Hawai'i 96734
Phone No. (808) 284-5675
Attorney for Defendant
Kaiula Kalawe English

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I,	CASE NO. CR 14-1-0819(3)
vs.	COUNT ONE: ROBBERY IN THE SECOND DEGREE
Kaiula Kalawe English,	COUNT TWO: ROBBERY IN THE SECOND DEGREE
Defendant.	COUNT THREE: UNAUTHORIZED ENTRY INTO MOTORE VEHICLE IN THE FIRST DEGREE
	COUNT FOUR: TERRORISTIC THREATENING IN THE FIRST DEGREE
	COUNT FIVE: HARRASSMENT
	DEFENDANT ENGLISH'S MOTION TO DISMISS CRIMINAL COMPLAINT PURSUANT TO HRPP 12(b)(1); MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF DAVID KEANU SAI, PH.D; EXHIBIT "1-8"; NOTION OF HEARING MOTION; CERTIFICATE OF SERVICE
	EVIDENTIARY HEARING:
	DATE: March 5, 2015
	TIME: 10:00 A.M.
	JUDGE: Joseph E. Cardoza

DEFENDANT ENGLISH'S MOTION TO DISMISS CRIMINAL COMPLAINT PURSUANT TO HRPP 12(B)(1)

COMES NOW Defendant Kaiula Kalawe English, by and through his above-named counsel (hereinafter referred to as "ENGLISH"), and hereby makes the following Motion to Dismiss State of Hawaii's instant Criminal Complaint on grounds that this Honorable Court is not a ***regularly constituted court*** under *Hamdan v. Rumsfeld*, 548 U.S. 557, 642 (2006) and for lack of subject matter jurisdiction,

which can be raised at any time throughout the proceedings pursuant to *Tamashiro v. State of Hawai`i*, 112 Haw. 388, 398; 146 P.3d 103, 113 (2006).

ENGLISH'S Motion to Dismiss is made pursuant to Rule 12(b)(1) of the Hawai'i Rules of Penal Procedure and is supported by the relevant facts and law set forth in the memorandum attached hereto, and a request for judicial notice of the enclosed exhibits attached to ENGLISH'S instant motion, attached declarations and exhibits.

WHEREFORE, ENGLISH demands that the instant Criminal Complaint be dismissed for the reasons stated in this motion as well as in the more fully detailed statement of the facts, set forth with pertinent legal background and authority, in the simultaneously filed Brief of ENGLISH in support of the motion to dismiss.

DATED: Honolulu, Hawai'i, February 6, 2015.

Dexter K. Kaiama
Attorney for Defendant
Kaiula Kalawe English

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I,	)	CASE NO. CR 14-1-0819(3)
	)	
vs.	)	
	)	**MEMORANDUM IN SUPPORT**
Kaiula Kalawe English,	)	
	)	
Defendant.	)	
	)	
	)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The State of Hawaii, through the Prosecuting Attorney's Office for the County of Maui (Hereinafter "STATE"), has filed charges of Robbery in the Second Degree (Count I), Robbery in the Second Degree (Count II), Unauthorized Entry Into Motor Vehicle in the First Degree (Count III), Terroristic Threatening in the First Degree (Count IV) and Harassment (Count V) in the Circuit Court of the Second Circuit, against Defendant Kaiula Kalawe English (Hereinafter "ENGLISH").

However, the STATE cannot claim relief from the Circuit Court of the Second Circuit because the appropriate court with subject matter jurisdiction in the Hawaiian Islands is an Article II Court established under and by virtue of Article II of the U.S. Constitution in compliance with Article 43, 1907 Hague Convention IV (36 U.S. Stat. 2277). Article II Courts are Military Courts established by authority of the President,[1] being Federal Courts, which were established as "the product of military occupation." See Bederman, Article II Courts, 44 Mercer Law Review 825-879, 826 (1992-1993).

Military Courts are generally based upon the occupant's customary and conventional duty to govern occupied territory and to maintain law and order.2

The fundamental question before this Court is whether or not it has subject-matter jurisdiction pursuant to Rule 12(b)(1), or, in other words, is the District Court of the Second Circuit "regularly constituted" under the Constitution and laws of the United States. Pursuant to the argument presented

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

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

below and the declaration and exhibits attached hereto, ENGLISH submits and provides formal notice that this court is not "regularly constituted" and lacks lawful subject matter jurisdiction over the instant Complaint.

II. STANDARD OF REVIEW

Rule 12(b)(1) of the Hawaii Rules of Penal Procedure reads as follows:

> **(b) Pretrial motions**. Any defense, objection or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial: (1) defenses and objections based on defect in the institution of the prosecution;.

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

II. ARGUMENT

a. State Can Provide No Legal Basis For Concluding This Court is Properly Constituted Pursuant to *Hamdan*, Thereby Affording Any Judicial Guarantees to a Fair and Regular Trial

1. State Has Failed to Prove This Court Has Subject Matter Jurisdiction.

In State of Hawai'i v. Lorenzo, 77 Haw. 219 (1994), the Defendant claimed to be a citizen of the Hawaiian Kingdom and that the State of Hawai`i courts did not have jurisdiction over him. In 1994, the case came before the Intermediate Court of Appeals (ICA) and Judge Heen delivered the decision. Judge Heen affirmed the lower court's decision denying Lorenzo's motion to dismiss, but explained that "Lorenzo [had] presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature." *Id*., 221. In other words, the reason Lorenzo's argument failed was because he "did not meet his burden of proving his defense of lack of

jurisdiction." *Id*.

In Nishitani v. Baker, 82 Haw. 281, 289 (1996), however, the Court shifted that burden of proof not upon the Defendant, but upon the Plaintiff, whereby "proving jurisdiction thus clearly rests with the prosecution." The Court explained, "although the prosecution had the burden of proving beyond a reasonable fact establishing jurisdiction, the defendant has the burden of proving facts in support of any defense…which would have precluded the court from exercising jurisdiction over the defendant (emphasis added)." *Id*. "'Substantial evidence' …is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." In re Doe, 84 Hawai'i 41, 46 (Haw. S.Ct. 1996).

As more fully set forth herein below, ENGLISH clearly establishes that he has met the requirements of *Lorenzo* and that the STATE has failed to meet its burden under *Nishitani* to prove this Court has subject matter jurisdiction over the instant complaint.

2. Supremacy Clause

The 1893 Executive Agreements—the *Lili'uokalani assignment* and the *Agreement of Restoration* (Exhibits "A-B" of Exhibit "2" to Declaration of David Keanu Sai, Ph.D), as sole-executive agreements, have the force and effect of a treaty. Although sole-executive agreements "might not be a treaty requiring ratification by the Senate, it was a compact negotiated and proclaimed under the authority of the President, and as such was a 'treaty.'" See ***U.S. v. Belmont***, 301 U.S. 324, 331 (1937). A "treaty is a 'Law of the Land' under the supremacy clause (Art. VI, Cl. 2) of the Constitution. Such international compacts and [sole-executive] agreements…have a similar dignity. Also See, ***U.S. v. Pink,*** 315 U.S. 203, 230 (1942). "[T]he distinction between so–called 'executive agreements' and 'treaties' is purely a constitutional one and has no international significance." Harvard Research in International Law, ***Draft Convention on the Law of Treaties***, 29 Amer. J. Int. L. 697 (Supp.) (1935).

Article VI, also known as the ***Supremacy clause***, provides, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States shall be the supreme Law of the Land." The President's Article II obligation to "take Care that the Laws be faithfully executed" applies to executive agreements. *See,* Professor Louis Henkin, ***International Law as the Law of the United States***, 82 Mich. L. Rev. 1555, 1567 (1984) ("There can be little doubt that the President has the duty, as well as the authority, to take care that international law, as part of the law of the United States, is faithfully executed.")[3]; ***Alexander***

3 See also *Taylor v. Morton*, 23 F. Cas. 784, 785 (C.C.D. Mass. 1855) (No. 13,799) (Curtis, Circuit Justice), aff'd, 67 U.S. (2 Bl.) 481 (1862) (treaties are "contracts, by which [sovereigns] agree to regulate their own conduct" and, under the Constitution, "part of our municipal law"); *Goldwater v. Carter*, 617 F.2d 697, 705 (D.C. Cir.), vacated, 444 U.S. 996 (1979) ("a treaty is sui generis. It is not just another law. It is an international compact, a solemn obligation of the United States and a 'supreme Law' that supersedes state policies and prior federal laws. For

Hamilton, Pacificus No. 1 (June 29, 1793) ("[The President] is charged with the execution of all laws, [has a] duty to enforce the laws [including treaties and] the laws of Nations, as well…. It is consequently bound…. [and since] Our Treaties and the laws of Nations form a part of the law of the land, [the President has both] a right, and … duty, as Executor of the laws … [to execute them]."); ***Representative John Marshall***, 10 Annals of Congress 614 (1800) ("He is charged to execute the laws. A treaty is declared to be a law. He must then execute a treaty, where he, …possesses the means of executing it … [and the President] is accountable to the nation for the violation of its engagements with foreign nations, and for the consequences resulting from such violation."); 1 Op. Att'y Gen. 566, 569-71 (1822) ("The President is the executive officer of the laws of the country; these laws are not merely the constitution, statutes, and treaties of the United States, but those general laws of nations which … impose on them, in common with other nations, the strict observance of a respect for their natural rights and sovereignties… This obligation becomes one of the laws of the country; to the enforcement of which, the President, charged by his office with the execution of all our laws … is bound to look."); ***The Lessee of Pollard's Heirs v. Kibbe***, 39 U.S. (14 Pet.) 353, 415 (1840) ("All treaties, compacts, and articles of agreement in the nature of treaties to which the United States are parties, have ever been held to be the supreme law of the land, executing themselves by their own fiat, having the same effect as an act of Congress, and of equal force with the Constitution; and if any act is required on the part of the United States, it is to be performed by the executive, and not the legislative power …")[4]

President Cleveland aptly explains the position of the United States in 1893 with regard to

---

clarity of analysis, it is thus well to distinguish between treaty-making as an international act and the consequences which flow domestically from such act. In one realm the Constitution has conferred the primary role upon the President; in the other, Congress retains its primary role as lawmaker."); 1 Westel Woodbury Willoughby, *The Constitutional Law of the United States* §317a at 577 (2d ed. 1929) ("Treaties entered into by the United States may be viewed in two lights: (1) as a constituting parts of the supreme law of the land, and (2) as compacts between the United States and foreign Powers.") "The foreign sovereign between whom and the United States a treaty has been made, has a right to expect and require its stipulations to be kept with scrupulous good faith…" *Taylor v. Morton*, 23 F. Cas. at 785. "[W]e are bound to observe [a treaty] with the most scrupulous good faith…[O]ur Government could not violate [it], without disgrace." *The Amiable Isabella*, 19 U.S. 1, 68 (1821). "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." *See* Vienna Convention on the Law of Treaties, art. 26 ("Every treaty in force is binding upon the parties to it and must be performed by them in good faith."), reprinted in Ian Brownlie (ed.), *Basic Documents in International Law* 388, 400 (4th ed. 1995). Although not ratified by the United States, the Vienna Convention "is frequently cited…as a statement of customary international law." *Review of Domestic and International Legal Implications of Implementing the Agreement with Iran*, 4A Op. O.L.C. 314, 321 (1981).

4 Other cases addressing presidential responsibility to comply with international law include: *Trans World Airlines v. Franklin Mint Corp*., 466 U.S. 243, 261 (1984) (O'Connor, J., opinion) (although political branches may terminate a treaty, power "delegated by Congress to the Executive Branch" must not be "exercised in a manner inconsistent with…international law."); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 275 (1990); *United States v. Curtiss-Wright Export Corp*., 299 U.S. 304, 318 (1936) (despite the existence of a broad foreign affairs power of the President, "operations of the nation in…["foreign"] territory must be governed by treaties…and the principles of international law…, the right and power of the united States in that field are equal to the right and power of the other members of the international community…[and], of course, like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution."); *Ex parte Quirin*, 317 U.S. 1, 26 (1942) ("the Constitution thus invests the President…with the power…to carry into effect…all laws defining and punishing offenses against the law of nations…"); *In re Neagle*, 135 U.S. 1, 63-64 (1890) (does this duty "include rights, duties and obligations growing out of…our international relations…?"); *In re The Nuestra Senora de Regla*, 108 U.S. 92, 102 (1882) ("It is objected, however, that the executive department of the Government had no power… It was the duty of the United States, under the law of nations, under the law of nations… The executive department had the right…"); Ex parte Milligan, 71 U.S. (4 Wall.) 2, 119, 121 (1866) ("By the protection of the law human rights are secured…the President…is controlled by law, and has his appropriate sphere of duty, which is to execute…the laws."); *Valentine v. Neidecker*, 299 U.S. 5, 14 & n. 12, 18 (1936); *Ford v. United States*, 273 U.S. 593, 606 (1927); *Francis v. Francis*, 203 U.S. 233, 240, 242 (1906); *United States v. Toscanino*, 500 D.2d 267, 276-79 (2d Cir. 1974); *Shapiro v. Ferrandina*, 478 F.2d 894, 906 n. 10 (2d Cir. 1973); *United States v. Ferris*, 19 F.2d 925, 926 (N.D. Cal. 1927); *United States v. Yunis*, 681 F.Supp. 896, 906 (D.D.C. 1988); *Fernandez v. Wilkenson*, 505 F.Supp. 787, 799-800 (D. Kan. 1980).

international law in his message to the Congress notifying them of the United States participation in the overthrow of the government of the Hawaiian Kingdom.[5]

After a thorough investigation into the overthrow of the Hawaiian Kingdom government, President Cleveland, who was McKinley's predecessor, concluded that the "lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives." *Id*., 455. President Cleveland explained his first attempt to settle the matter through "Executive mediation," which was based solely on the powers of the President as Commander–in–Chief and organ of foreign relations.

> "Actuated by these desires and purposes, and not unmindful of the inherent perplexities of the situation nor of the limitations upon my power, I instructed Minister Willis to advise the Queen and her supporters of my desire to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned. The conditions suggested, as the instructions show, contemplate a general amnesty to those concerned in setting up the provisional government and a recognition of all its bona fide acts and obligations. In short, they require that the past should be buried, and that the restored Government should reassume its authority as if its continuity had not been interrupted. These conditions have not proved acceptable to the Queen, and though she has been informed that they will be insisted upon, and that, unless acceded to, the efforts of the President to aid in the restoration of her Government will cease, I have not thus far learned that she is willing to yield them her acquiescence. The check which my plans have thus encountered has prevented their presentation to the members of the provisional government, while unfortunate public misrepresentations of the situation and exaggerated statements of the sentiments of our people have obviously injured the prospects of successful Executive mediation." *Id*., 458.

While President Cleveland continued Executive mediation with the Queen to secure her agreement to the conditions of restoration he also "commend[ed] this subject to the extended powers and wide discretion of the Congress," and that he would cooperate "in any legislative plan which may be

---

5 In his message, President Cleveland states:

"The law of nations is founded upon reason and justice, and the rules of conduct governing individual relations between citizens or subjects of a civilized state are equally applicable as between enlightened nations. The considerations that international law is without a court for its enforcement, and that obedience to its commands practically depends upon good faith, instead of upon the mandate of a superior tribunal, only give additional sanction to the law itself and brand any deliberate infraction of it not merely as a wrong but as a disgrace. A man of true honor protects the unwritten word which binds his conscience more scrupulously, if possible, than he does the bond a breach of which subjects him to legal liabilities; and the United States in aiming to maintain itself as one of the most enlightened of nations would do its citizens gross injustice if it applied to its international relations any other than a high standard of honor and morality. On that ground the United States can not properly be put in the position of countenancing a wrong after its commission any more than in that of consenting to it in advance. On that ground it can not allow itself to refuse to redress an injury inflicted through an abuse of power by officers clothed with its authority and wearing its uniform; and on the same ground, if a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation." United States House of Representatives, 53d Cong., *Executive Documents on Affairs in Hawai'i: 1894-95*, 456 (Government Printing Office 1895) [hereafter *Executive Documents*].

devised for the solution of the problem…which is consistent with American honor, integrity, and morality." *Id*. The President, however, did not know that before sending his message to the Congress his "Executive mediation" was in fact successful. Minister Albert Willis was able to secure, after of month of mediation since November 16, 1893, the Queen's written assent to the conditions of restoration on December 18, 1893, being the very same day President Cleveland delivered his message to the Congress. The signed assent of the Queen was not dispatched to the U.S. State Department until December 20, 1893.

In his follow up message on January 13, 1894, the Congress was notified "that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the Provisional Government refuse[d] to acquiesce in the President's decision." *Id*., 1283-84. Instead of cooperating with the President in devising a "legislative plan which may be devised for the solution of the problem…which is consistent with American honor, integrity, and morality," both the House of Representatives[6] and Senate[7] took deliberate steps "warning the President against the employment of forces to restore the monarchy of Hawai'i."[8] Senator Kyle's resolution introduced on May 23, 1894 specifically addresses the *Agreement of restoration*. The resolution was later revised by Senator Turpie and passed by the Senate on May 31, 1894. Senator Kyle's resolution stated:

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

Not only do these resolutions acknowledge the executive agreements between Queen Lili'uokalani and President Cleveland, but these resolutions also violate the separation of powers doctrine whereby the President is the sole representative of the United States in foreign relations. American

---

6 House Resolution on the Hawaiian Islands, February 7, 1894:
"*Resolved*, First. That it is the sense of this House that the action of the United States minister in employing United States naval forces and illegally aiding in overthrowing the constitutional Government of the Hawaiian Islands in January, 1893, and in setting up in its place a Provisional Government not republican in form and in opposition to the will of a majority of the people, was contrary to the traditions of our Republic and the spirit of our Constitution, and should be condemned. Second. That we heartily approve the principle announced by the President of the United States that interference with the domestic affairs of an independent nation is contrary to the spirit of American institutions. And it is further the sense of this House that the annexation of the Hawaiian Islands to our country, or the assumption of a protectorate over them by our Government is uncalled for and inexpedient; that the people of that country should have their own line of policy, and that foreign intervention in the political affairs of the islands will not be regarded with indifference by the Government of the United States." (U.S. Senate Resolution on Hawai'i, 53 Cong., 2nd Sess., 2000 (1894)).

7 Senate Resolution on the Hawaiian Islands, May 31, 1894:
"*Resolved*, That of right it belongs wholly to the people of the Hawaiian Islands to establish and maintain their own form of government and domestic polity; that the United States ought in nowise to interfere therewith, and that any intervention in the political affairs of these islands by any other government will be regarded as an act unfriendly to the United States." (U.S. House Resolution on Hawai'i, 53 Cong., 2nd Sess., 5499 (1894)).

8 Edward Corwin, *The President's Control of Foreign Relations*, (1917), 45.

foreign relations scholar Quincy Wright, ***The Control of American Foreign Relations***, 235 (1922), (the President binds "himself and his successors in office by executive agreements;" and "congressional resolutions on concrete incidents are encroachments upon the power of the Executive Department and are of no legal effect." *Id*., 281). Although Congress prevented President Cleveland from carrying out the executive agreements, they remained binding upon President Cleveland's successors, that being the Office of the President, to take care that the executive agreements be faithfully executed pursuant to the *Supremacy clause*.

3. Congress Has No Exterritorial Effect In The Annexation of Foreign Territory

A. Limits and Exceptions on Legislative Jurisdiction

The sovereignty of an independent state is territorial and international law provides for its restrictions and exceptions. ***"Now the first and foremost restriction imposed by international law upon a State is that***—failing the existence of a permissive rule to the contrary—***it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from convention (treaty)."*** See ***The Lotus***, PCIJ Series A, No. 10 (1927), 18-19. The Permanent Court of International Justice continued, "In these circumstances, all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty." *Id*., 19.

"During the 19th century, American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction." See Gary B. Born, ***International Civil Litigation in United States Courts*** 493 (1996). *See Also*, ***The Apollon***, 22 U.S. 362, 370-371 (1824) ("**The laws of no nation can justly extend beyond its own territory**, except so far as regards its own citizens"; ***Rose v. Himely,*** 8 U.S. 241, 279 (1807) ("**It is conceded that the legislation of every country is territorial**; that beyond its own territory it can only affect its own subjects or citizens. It is not easy to conceive a power to execute a municipal law or to enforce obedience to that law without the circle in which that law operates"); Joseph Story, ***Commentaries on the Conflicts of Laws*** §449-50 (2 ed. 1841) ("Considered in an international point of view, jurisdiction, to be rightfully exercises, must be founded either upon the person being within the territory or the thing being within the territory; for otherwise there can be no sovereignty exerted. …[N]o sovereignty can extend to process beyond its own territorial limits to subject either persons or property to its judicial decisions"); Secretary of State Frelinghuysen to Senator Morgan, May 17, 1884, ***Foreign Relations of the United States*** 358 (1885) (**It is the "uniform declaration of writers on public law [that] in an international point of**

view, either thing or the person made the subject of jurisdiction must be within the territory, for no sovereignty can extend its process beyond its own territorial limits").

B. Annexation by Congressional-Executive Agreement

The ***Authority of Annexation*** is implied in the Congressional apology for the illegal overthrow of the Hawaiian Kingdom government, 107 Stat. 1510 (1993) ("*Whereas*, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States"); and in ***Hawai'i v. Mankichi***, 190 U.S. 197, 209 (1903) ("By a joint resolution adopted by Congress, July 7, 1898, 30 Stat. 750, known as the Newlands Resolution, and with the consent of the Republic of Hawaii, signified in the manner provided in its Constitution, the Hawaiian islands and their dependencies were annexed 'as a part of the Territory of the United States, and subject to the sovereign dominion thereof'"); *see* also ***Validity of Congressional-Executive Agreements that Substantially Modify the United States' Obligation Under An Existing Treaty***, 20 Op. O.L.C. 389, 398, n. 19 (1996).

Evidence, however, is lacking to support this claim. There is no agreement between the Executive of the United States and the so-called Republic of Hawai'i that Congress had previously or subsequently authorized. Furthermore, the Congressional records in 1898 provide no indication or reference to any agreement made between the McKinley administration and the so-called Republic, except through a treaty that failed to receive ratification by the Senate. Instead, the debates centered on legislative jurisdiction and whether or not Congressional action had the power to annex foreign territory, being separate and distinct from the President's "power to make acquisitions of territory by conquest, by treaty, and by cession [which] is an incident of national sovereignty."[9]

---

9 During debate over the proposed resolution of annexation, Congressman Thomas H. Ball (D-Texas) stated:

"The annexation of Hawai'i by joint resolution is unconstitutional, unnecessary, and unwise. If the first proposition be true, sworn to support the Constitution, we should inquire no further. I challenge not the advocates of Hawaiian annexation, but those who advocate annexation in the form now presented, to show warrant or authority in our organic law for such acquisition of territory. To do so will be not only to subvert the supreme law of the land but to strike down every precedent in our history. …**Why, sir, the very presence of this measure here is the result of a deliberate attempt to do unlawfully that which can not be done lawfully."** *See* 55th Cong. 2nd Session, 31 Cong. Record: 1898, 5975. [Emphasis added].

Senator Augustus Bacon (D-Georgia) further clarified the limits of Congressional authority when the resolution entered the Senate on June 16, 1898. Senator Bacon explained:

"That a joint resolution for the annexation of foreign territory was necessarily and essentially the subject matter of a treaty, and that it could not be accomplished legally and constitutionally by a statute or joint resolution. If Hawai'i was to be annexed, it ought certainly to be annexed by a constitutional method; and if by a constitutional method it can not be annexed, no Senator ought to desire its annexation sufficiently to induce him to give his support to an unconstitutional measure." *Id*., 6148

"…Now, a statute is this: A Statute is a rule of conduct laid down by the legislative department, which has its effect upon all of those within the jurisdiction. In other words, a statute passed by the Congress of the United States is obligatory upon every person who is a citizen of the United States or a resident therein. **A statute can not go outside the jurisdiction of the United States and be binding upon the subjects of another power. It takes the consent of the subjects of the other power, speaking or giving their consent through their duly authorized government, to be bound by a certain thing which is enacted in this country; and therein comes the necessity for a treaty."** *Id*., 6150

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

According to constitutional scholar Westel Woodbury Willoughby, ***The Constitutional Law of the United States*** §239, 427 (1929), "The constitutionality of the annexation of Hawai'i, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by simple legislative act. ***…Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature it is enacted."***

Consistent with this nearly fifty years later, *acting* Assistant U.S. Attorney General Douglas Kmiec in 1988 from the U.S. Department of Justice's Office of Legal Counsel concluded, "***It is…unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution***. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea." See ***Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea***, 12 Op. O.L.C. 238, 252 (1988).

4. Hamdan Affirms This Court Is Not Lawfully Constituted

Common Article 3 of the Fourth Geneva Convention provides that "the passing of sentences and the carrying out of executions without previous judgment pronounced by a ***regularly constituted court***, affording all the judicial guarantees which are recognized as indispensable by civilized peoples (emphasis added)" is **prohibited**. *Id*. (Art. 3, para. 1d). In *Hamdan v. Rumsfeld*, 548 U.S. 557, 642 (2006), the Court declared this "provision is part of a treaty the United States has ratified and thus accepted as binding law. (citation omitted). By Act of Congress, moreover, violations of Common Article 3 are considered 'war crimes,' punishable as federal offenses, when committed by or against United States nationals and military personnel."

The U.S. Supreme Court in *Hamdan* at 632, n. 64, held that "properly constituted" and "regularly constituted" courts are synonymous. **The Court relied on the International Committee of the Red Cross that defines a *"regularly constituted court"* as a court *"established and organized in accordance with the laws and procedures already in force in a country." (*quoting Int'l Comm. of Red Cross, 1 Customary Int'l Humanitarian Law 355) (2005)**. Common Article 3 of the Geneva Conventions prohibits "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples (emphasis added)." See, *e.g.,* Article 3 of the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, [1955] 6 U. S. T. 3516, 3518, T. I. A. S. No. 3365.

Only a "regularly constituted court" may pass judgment, and when a court is not "regularly

constituted," all proceedings leading to a judgment imposed by it is extrajudicial and a violation of Common Article 3 of the Fourth Geneva Convention**.** The Circuit Court of the Second Circuit **IS NOT ESTABLISHED** ***"in accordance with the laws and procedures" of the Hawaiian Kingdom nor is it regularly constituted under the international laws of occupation, and therefore is not "regularly constituted" under any of the above standards.***

In establishing "courts of the Territory," the Congress ***Did Not Rely*** on a treaty ceding Hawaiian territory to the United States, but rather under an Act of Congress. Section 2 of the Organic Act stated, ***"That the islands acquired by the United States of America under an Act of Congress entitled 'Joint resolution to provide for annexing the Hawaiian Islands to the United States,'*** approved July seventh, eighteen hundred and ninety-eight, shall be known as the Territory of Hawaii." It is clear that the authority of this Court, as set forth hereinabove, and the annexation of the Hawaiian Islands as foreign territory relies squarely on Congressional legislation, whether by Acts or a Joint resolution. Congressional legislation, however, is limited, especially with regard to the territory of a foreign State.

Congressional authority is limited to United States territory. Accordingly, Congress cannot establish a government with courts in the territory of a foreign state. In ***U.S. v. Curtiss-Wright Export Corporation,*** 299 U.S. 304, 318 (1936), the U.S. Supreme Court is instructive on limits of the United States' constitution and its laws. In ***Curtiss-Wright***, the Court decreed, ***"Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens."*** Under customary international law, as reflected in the express language of Restatement Third, Foreign Relations Law of the United States, §203 (1987), **"International law is violated…if a state imposes a government on another state."**

The Permanent Court of Arbitration, in its *dictum* stated that, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties." See *Larsen v. Hawaiian Kingdom*, 119 Int'l L. Rep. 566, 581 (2001), *reprinted in* 1 Haw. J. L. & Pol. 299 (Summer 2004). See, "Expert Memorandum on the Continuity of the Hawaiian Kingdom as an Independent and Sovereign State (November 28, 2010)." (Exhibit "2" to the Declaration of David Keanu Sai, Ph.D).

The Joint resolution to provide for annexing the Hawaiian Islands to the United States, approved July 7, 1898, did not annex the Hawaiian Kingdom, being a foreign state, because the "[U.S.] Constitution nor the laws passed in pursuance of it have any force in foreign territory" except over Untied States citizens abroad. (*Id*., quoting *U.S. v. Curtiss-Wright*, at 318). Accordingly, as affirmed in ***Curtiss-Wright***, Section 2 of the Organic Act is invalid and unlawful as this act of congress exceeded the limits of its constitutional authority.

The Supreme Court, **in *Curtiss-Wright***, answers what governs actions taken by the United States in foreign territory. The Court stated, ***"operations of the [United States] in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.*** As a member of the family of nations, the right and power of the United States in that field are equal to the right and power of the other members of the international family (emphasis added)."

Since, according to *Hamdan*, a court that is not "regularly constituted" and carries on proceedings undeniably violates international law, and as a court not "regularly constituted" it lacks "all the judicial guarantees which are recognized as indispensable by civilized peoples." In *Hamdan*, the plurality of the court found that the "phrase 'all the judicial guarantees…recognized as indispensable by civilized peoples,' in Common Article 3 of the Geneva Conventions is not defined, but it must be understood to incorporate at least the barest of the trial protections recognized by customary international law." 548 U.S. at 633 (plurality op.).

Justice Kennedy did not join this particular section of Justice Stevens' opinion because he found no need to consider the particular guarantees of a fair trial since he already concluded the military commissions were not regularly constituted. *See* 548 U.S. at 653-54 (Kennedy, J., concurring). ***In other words, Justice Kennedy reasoned that a court not properly constituted could not provide any guarantees of a fair trial.***

Since the Circuit Court of the Second Circuit is not regularly constituted it cannot provide any guarantees of a fair trial. Accordingly, by virtue of the Court maintaining the proceedings without jurisdiction, the Court is committing a violation of international law by "willfully depriving a protected person of the rights of fair and regular trial," 6 U. S. T. at 3618.

In compliance with its treaty obligations as a High Contracting Party to the Geneva Convention, IV, in 1996 the United States enacted Title 18 U.S.C. §2441 of the War Crimes Act making the willful deprivation of client's right to a fair and regular trial by a court that is not properly constituted pursuant to the 1907 Hague Convention, IV, and the 1949 Geneva Convention, IV a felony.[10]

Article 147 of the Fourth Geneva Convention defines one of the grave breaches as ***"willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention."*** Willfully depriving ENGLISH of the rights of a fair and regular trial is a violation of the Geneva Convention, IV and a felony punishable under the War Crimes Act, Title 18, U.S.C., §2441 that

10 18 U.S.C. §2441 provides: (a) Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the death penalty. (b) The circumstances referred to in subsection (a) are ***that the person committing such war crime*** or the victim of such war crime ***is a member of the Armed Forces of the United States or a national of the United States*** (as defined in section 101 of the Immigration and Nationality Act). (c) As used in this section the term "war crime" means any conduct (1) ***defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949***. [Emphasis Added]

also applies "outside" of the United States of America.

III. REQUEST FOR JUDICIAL NOTICE

Judicial notice is the act by which a court recognizes the existence and truth of certain facts that have a bearing on the case. ***"All courts are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government, and that extent and boundaries of the territory under which they can exercise jurisdiction."*** See 29 Am.Jur.2d Evidence, §83 (2008). ***"State and federal courts must judicially notice all treaties [executive agreements] of the United States."*** Id., §123. "When considering a treaty [executive agreement], courts must take judicial notice of all facts connected therewith which may be necessary for its interpretation or enforcement, such as the historical data leading up to the making of the treaty [executive agreement]." Id., §126.

Rule 201(d) of the Hawai'i Rules of Evidence (HRE) states that the Court is **mandated** to "take judicial notice if requested by a party and supplied with the necessary information," provided the Defendant supplies the Court with data consistent with the requirement of Rule 201(b). See Rule 201 Commentary, Hawai'i Rules of Evidence, at 401. HRE Rule 202(b)(2) provides mandatory judicial notice of law, which includes executive agreements.

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

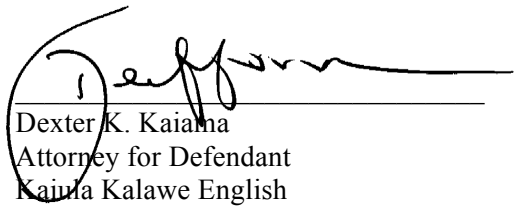
ENGLISH hereby formally requests this Court to take judicial notice pursuant to Rules 201(d); 202(b)(2); and 902(5), Hawai'i Rules of Evidence, of the following: (a) Treaty of Friendship, Commerce and Navigation, Dec. 20th 1849 (9 U.S. Stat. 977); (b) Treaty of Commercial Reciprocity, Jan. 13th 1875 (19 U.S. Stat. 625); (c) Postal Convention Concerning Money Orders, Sep. 11th 1883 (23 U.S. Stat. 736); (d) Supplementary Convention to the 1875 Treaty of Commercial Reciprocity, Dec. 6th 1884 (25 U.S. Stat. 1399); (e) Hague Convention, IV, October 18, 1907 (36 U.S. Stat. 2277); (f) Geneva Convention, IV, August 12, 1949 (6.3 U.S.T. 3516); (g) Exh. "2" to Declaration of David Keanu Sai, Ph.D – "Expert Memorandum on the Continuity of the Hawaiian Kingdom as an Independent and Sovereign State (Nov. 28, 2010)"; (h) Exh. "2A" to Declaration of David Keanu Sai, Ph.D – Lili'uokalani Assignment; (i) Exh. "2B" to Declaration of David Keanu Sai, Ph.D – Restoration Agreement; (j) Larsen v. Hawaiian Kingdom, 119 International Law Reports 566 (2001); (k) United States v. Belmont, 301 U.S. 324, 332 (1937); (l) United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 318 (1936); (m) State of Hawai'i v. Lorenzo, 77 Haw. 219 (1994).

VII. CONCLUSION

Based upon the foregoing, as the Circuit Court of the Second Circuit (as well as all courts of the State of Hawaii) is not a regularly and lawfully constituted court, it cannot provide Defendants, pursuant to *Hamdan*, a "fair and regular trial" guaranteed them under the Fourth Geneva Convention and that the Court's continued retention of jurisdiction over STATE's Complaint in the illegally occupied territory of Hawai'i violates international law as well as U.S. Federal Law, 18 U.S.C. §2441 enacted by U.S. Congress in compliance with the Geneva Convention, IV.

Pursuant to the foregoing, ENGLISH respectfully requests this Honorable Court dismiss the instant Complaint for lack of subject matter jurisdiction.

DATED: Honolulu, Hawai'i, February 6, 2015.



Dexter K. Kaiama
Attorney for Defendant
Kaiuna Kalawe English

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I, vs. Kaiula Kalawe English, Defendant.	)))))))))	CASE NO. CR 14-1-0819(3) **Declaration of David Keanu Sai, Ph.D; Exhibits "1-8"**

DECLARATION OF DAVID KEANU SAI, PH.D

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

1. I have a Ph.D. in political science specializing in international relations, international law, U.S. constitutional law and Hawaiian constitutional law. My contact information is 47-605 Puapo'o Place, Kaneohe, Hawai'i, 96744, 808-383-6100 and e-mail address at keanu.sai@gmail.com.
2. Attached hereto as Exhibit "1" is a true and correct copy of my curriculum vitae.
3. Attached hereto as Exhibit "2" is a true and correct copy of my expert legal brief titled "The Continuity of the Hawaiian State and the Legitimacy of the *Acting* Government of the Hawaiian Kingdom" that was included in the *Acting Governments'* September 25, 2013 Application for Proceedings filed with the International Court of Justice.
4. The Hawaiian Kingdom, as an independent and sovereign state, has forty-sic (46) treaty partners to wit: Argentina, Austria, Belgium, Bolivia, Brazil, Bulgaria, Chile, Costa Rica, Denmark, Dominican Republic, Egypt, Ecuador, El Salvador, France, Germany, Greece, Guatemala, Haiti, Honduras, Hungary, Iran, Italy, Japan, Liberia, Luxembourg, Mexico, Montenegro, Netherlands, Nicaragua, Norway, Paraguay, Peru, Portugal, Romania, Russia, Serbia, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United State of America, Uruguay, and Venezuela.
5. The aforementioned treaties have not been terminated by consent of the parties and still remain in full force and effect.
6. States, who gained their independence from State parties to treaties with the Hawaiian Kingdom, whether as colonial possessions, mandate territories or trust territories, are also successor State parties to the treaties with the Hawaiian Kingdom, which now includes one-hundred and twenty-seven (127) States.
7. On August 1, 2012, the acting government of the Hawaiian Kingdom commissioned me as

Ambassador-at-large to bring to the attention of the international community the illegal and prolonged occupation of the Hawaiian Kingdom and to prepare a Protest and Demand to be filed with the President of the United Nations General Assembly under Article 35(2) of the Charter of the United Nations.

8. Article 35(2) of the United Nations Charter provides, "a State which is not a Member of the United Nations may bring to the attention of the…General Assembly any dispute to which it is a party..." The Hawaiian Kingdom is a non-Member State of the United Nations.

9. On August 10, 2012, I was granted permission to enter the United Nations facility and Mrs. Hanifa Mezoui, Ph.D., Special Coordinator, Third Committee and Civil Society, Office of the President of the Sixty-Sixth Session of the General Assembly received me in the headquarters for the President of the United Nations General Assembly.

10. After I presented my credentials and explained the circumstances of the Hawaiian situation and that I was there to file a Protest and Demand against one-hundred and seventy-three (173) member States of the United Nations for treaty violations as a non-member State under Article 35(2) of the United Nations Charter, Dr. Mezoui acknowledged receipt of the Protest and Demand and a CD of PDF files of Annexes.

11. One-hundred and twenty (120) named States in the Protest and Demand are also members of the Group of 77 at the United Nations. Mr. Pierre Forien, on behalf of the Executive Secretary of the Group of 77, also acknowledged receipt of the Protest and Demand and a CD of PDF files of Annexes on August 10, 2012 at the United Nations.

12. The Protest and Demand and a CD of PDF files of Annexes was also acknowledged and received by Mr. Carlyle Corbin, Ph.D., Executive Secretary of the Council of Presidents, which is a think tank comprised of former Presidents of the United Nations General Assembly that advises the sitting President, on August 10, 2012.

13. Attached hereto as Exhibit "3" are true and correct copies of Dr. Hanifa Mezoui's (Office of the President of the Sixty-Sixth Session of the U.N. General Assembly), Mr. Pierre Forien's (Executive Secretary of the Group of 77 of the U.N.) and Dr. Carlyle Corbin's (Executive Secretary of the Council of Presidents of the U.N. General) acknowledgment of receipt of said Protest and Demand and CDs of said PDF files.

14. All one-hundred and seventy-three (173) named States in the Protest and Demand received a copy of the same by their Permanent Missions to the United Nations in New York.

15. A true and correct copy of the Protest and Demand (without annexes) and the cover letter to the President of the United Nations General Assembly can be accessed online at: http://hawaiiankingdom.org/pdf/UN_Protest.pdf. Also, See Exhibit "2" at pg. 46 to my

declaration.

16. True and correct PDFs of the Annexes, to said Protest and Demand, can also be accessed online at http://hawaiiankingdom.org/UN_Protest_Annexes.shtml.

17. Attached hereto as Exhibit "4" is a true and correct copy of a second letter received by the President of the United Nations General Assembly dated August 14, 2012.

18. On August 19, 2012, I received a telephone call from Mr. Mourad Ahmia, Executive Secretary of the Group 77 at the United Nations, in New York City, notifying me that after further review by the President's office the Protest and Demand met the procedural requirements under the Charter of the United Nations, the Hawaiian Protest and Demand was forwarded to the President of the United Nations General Assembly, H.E. Mr. Nassir Abdulaziz Al-Nasser of Qatar, under Article 35(2) of the Charter of the United Nations.

19. Mr. Ahmia also told me that H.E. Mr. Nassir Abdulaziz Al-Nasser would be passing on the Protest and Demand and all relevant documents to his successor H.E. Vuk Jeremic' of the Republic of Serbia, who took office on September 18, 2012.

20. On November 28, 2012, the acting Government of the Hawaiian Kingdom acceded to the Rome Statute establishing the International Criminal Court, The Hague, Netherlands.

21. On December 10, 2012, I deposited the Instrument of Accession with the Secretary-General of the United Nations, by the United Nations Treaty Section, Office of Legal Affairs, in New York City. The International Criminal Court prosecutes individuals and not States for war crimes.

22. Attached as Exhibit "5" are true and correct copies of the: (a) Instrument of Accession, dated November 28, 2012; (b) cover letter to the Secretary-General of the United Nations dated December 10, 2012; and (c) of the United Nations Treaty Section, Office of Legal Affairs, acknowledgement and receipt of the Instrument of Accession.

23. On January 14, 2013, I deposited, by courier, an instrument of accession acceding to the 1949 Fourth Geneva Convention for the Protection of Civilian Persons in Time of War with Ambassador Benno Bättig, General Secretariat of the Swiss Federal Department of Foreign Affairs (FDFA), received at his office in Berne, Switzerland. The Fourth Geneva Convention took immediate effect on January 14, 2013 pursuant to Article 157 of the Fourth Geneva Convention.

24. Attached as Exhibit "6" is a true and correct copy of the Swiss Government's acknowledgment and receipt dated January 14, 2013 and the Instrument of Accession dated November 28, 2012.

25. Attached hereto as Exhibits "7-8" are true and correct copies of the relevant parts of the *Lili'uokalani Assignment* and *Restoration Agreement* as is more fully described in my expert legal brief (Exhibit "2") and the hereinabove referred to Protest and Demand filed with the U.N.

General Assembly.

26. I am qualified and competent to testify on the matters stated herein and further as an Expert witness in matters concerning the Legal Continuity of the Hawaiian Kingdom as an Independent and Sovereign State.

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

DATED: Kane‘ohe, O‘ahu, Hawai‘i, February 4, 2015.

David Keanu Sai

EXHIBIT “1”

Curriculum Vitae

DAVID KEANU SAI

EXPERTISE:

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

ACADEMIC QUALIFICATIONS:

Dec. 2008: Ph.D. in Political Science specializing in international law, state sovereignty, international laws of occupation, United States constitutional law, and Hawaiian constitutional law, University of Hawai`i, Manoa, H.I.

- Doctoral dissertation titled, "American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State."

May 2004: M.A. in Political Science specializing in International Relations, University of Hawai'i, Manoa, H.I.

May 1987: B.A. in Sociology, University of Hawai'i, Manoa, H.I.

May 1984: A.A. in Pre-Business, New Mexico Military Institute, Roswell, N.M., U.S.

May 1982: Diploma, Kamehameha Schools, Honolulu, H.I.

PANELS AND PRESENTATIONS:

- *Hawai'i: An American State or a State under American Occupation,* Swiss Diplomats—Zurich Network and Foraus, University of Zurich, Switzerland, November 11, 2013.

47-605 Puapo`o Place
Kane`ohe, HI 96744
Tel: (808) 383-6100
anu@hawaii.edu

- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai`i. A presentation entitled "1893 Executive Agreements and their Impact Today," March 15, 2013.

- *Why the Birthers Are Right For All The Wrong Reasons,* Harvard University, Massachusetts, October 12, 2012.

- *Why the Birthers Are Right For All The Wrong Reasons,* University of Massachusetts, Boston, October 12, 2012.

- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai`i. A presentation entitled "1893 Executive Agreements and their Impact Today," March 16, 2012.

- "The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State." *Sustainability for Biological Engineers Lecture Series*, University of Hawai`i at Manoa, Agricultural Science Bldg. 219, December 7, 2010.

- "1893 Cleveland-Lilu`uokalani Executive Agreements and their Impact Today." Presentation at the *Annual Convention of Hawaiian Civic Clubs*, Sheraton Keauhou Bay Resort & Spa, Island of Hawai`i, November 9, 2010.

- "The History of the Hawaiian Kingdom." Presentation at the annual convention of the *Victorian Society of Scholars*, Kana`ina Bldg., Honolulu, October 28, 2010.

- "Pu`a Foundation: E pu pa`akai kakou." Joint presentation with Pu`a Foundation of an educational package and curriculum I authored for teaching Hawaiian history, *Healing Our Spirit World, The Sixth Gathering*, Hawai`i Convention Center, September 7, 2010.

- "Evolution of Hawaiian land Titles and the Impact of the 1893 Executive Agreements." Sponsored by the County of Maui, Real Property Tax Division, HGEA Bldg, Kahului, June 28, 2010.

- "Evolution of Hawaiian land Titles and the Impact of the 1893 Executive Agreements." Sponsored by the City & County of Honolulu, Real Property Assessment Division, Mission Memorial Auditorium, June 9, 2010.

- "Hawai`i's Legal and Political History." Sponsored by *Kokua A Puni Hawaiian Student Services*, UH Manoa, Center for Hawaiian Studies, UHM, May 26, 2010.

- "Ua Mau Ke Ea: Sovereignty Endured." Joint presentation with Pu`a Foundation of an educational package and curriculum I authored for teaching Hawaiian history, *Native Hawaiian Education Association Conference*, Windward Community College, March 19, 2010.

- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai`i. A presentation entitled "Evolution of Hawaiian Land Titles and its Impact Today," March 12, 2010.

- "1893 Cleveland-Lili`uokalani Agreement of Restoration (Executive Agreement)." Sponsored by the Haloa Research Center, Baldwin High School Auditorium, February 20, 2010.

- "1893 Cleveland-Lili`uokalani Agreement of Restoration (Executive Agreement)." Sponsored by Kamehameha Schools' Kula Hawai`i Teachers Professional Development, Kapalama Campus, Konia, January 4, 2010.

- "The Legal and Political History of Hawai`i." Sponsored by House Representative Karen Awana, National Conference of Native American State Legislators, State of Hawai`i Capital Bldg, November 16, 2009.

- "The Myth of Ceded Lands: A Legal Analysis." Sponsored by Hawaiian Studies, Ho`a and Ho`okahua (STEM), Maui Community College, Noi`i 12-A, November 2, 2009.

- "The Legal and Political History of Hawai`i." Presentation to the *Hui Aloha `Aina Tuahine*, Center for Hawaiian Studies, University of Hawai`i at Manoa, October 30, 2009.

- "The Legal and Political History of Hawai`i." Presentation to *Kahuewai Ola*, Queen Lili`uokalani Center for Student Services, University of Hawai`i at Manoa, October 23, 2009.

- "The Myth of Ceded Lands: A Legal Analysis." Sponsored by Kamehameha Schools Ka`iwakiloumoku Hawaiian Cultural Events Series, Ke`eliokalani Performing Arts Center, Kamehameha Schools Kapalama campus, October 21, 2009.

- "The Myth of Ceded Lands: A Legal Analysis." Sponsored by ASUH and Hawaiian Studies, Paliku Theatre, Windward Community College, September 10, 2009.

- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kohana Center/Kamehameha Investment Corporation, Keauhou II Convention Center, Kona, Hawai`i. A presentation entitled "The Myth of Ceded Lands: A Legal Analysis," March 13, 2009.

- "American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State." Briefing for Colonel James Herring, Army Staff Judge Advocate, 8th Theater Sustainment Command, and his staff officers, Wheeler AAF Courthouse, U.S. Army Pacific, Wahiawa, Hawai`i, February 25, 2009.

- *Ka Nalu: Towards a Hawaiian National Conciousness*, Symposium of the Hawaiian Society of Law and Politics, University of Hawai`i at Manoa, Imin Conference Bldg

(East West Center). Presented a portion of my doctoral dissertation entitled "The Myth of Ceded Lands: A Legal Analysis," February 28, 2009.

- *Manifold Destiny: Disparate and Converging Forms of Political Analysis on Hawai`i Past and Present*, International Studies Association Annual Conference, San Francisco, California, March 26, 2008. Presented a paper entitled "A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian Nationality and Hawaiian Indigeneity and its Use and Practice in Hawai`i today," March 26, 2008.

- *Mana Kupuna Lecture Series*, University of Waikato, New Zealand. A presentation entitled "Legal and Political History of the Hawaiian Kingdom," March 5, 2008.

- *Indigenous Politics Colloquium* speaker series, Department of Political Science, University of Hawai`i at Manoa. Presented an analysis and comparison between Hawaiian State sovereignty and Hawaiian indigeneity and its use and practice in Hawai`i today," January 30, 2007.

- Conference at Northeastern Illinois University entitled *Dialogue Under Occupation: The Discourse of Enactment, Transaction, Reaction and Resolution*. Presented a paper on a panel entitled "Prolonged Occupation of the Hawaiian Kingdom," Chicago, Illinois, November 10, 2006.

- The 14th Biennial Asian/Pacific American Midwest Student Conference, "Refocusing Our Lens: Confronting Contemporary Issues of Globalization and Transnationalism." Presented article "American Occupation of the Hawaiian State: A Century Unchecked" on Militarization Panel, Oberlin College, Ohio, February 18, 2006.

- 2005 American Studies Association Annual Conference. Panelist on a roundtable discussion entitled, "The Case for Hawai`i's Independence from the United States - A Scholarly and Activist Roundtable Discussion," with Keala Kelly and Professor Kehaulani Kauanui. Renaissance Hotel, Washington, D.C., November 4, 2005.

- Kamehameha Schools 2005 Research Conference on Hawaiian Well-being, sponsored by the Kamehameha Schools *Policy Analysis & Systems Evaluation* (PACE). Presented article "Employing Appropriate Theory when Researching Hawaiian Kingdom Governance" with two other presenters, Malcolm Naea Chun and Dr. Noelani Goodyear-Kaopua. Radisson Prince Kuhio Hotel, Waikiki, October 22, 2005.

- 1st Annual Symposium of the *Hawaiian Society of Law & Politics* showcasing the first edition of the *Hawaiian Journal of Law & Politics (summer 2004)*. Presented article "American Occupation of the Hawaiian State: A Century Gone Unchecked," with response panellists Professor John Wilson, Political Science, and Kanale Sadowski, 3rd year law student, Richardson School of Law. Imin International Conference Center, University of Hawai`i at Manoa, April 16, 2005.

- "A Symposium on Practical Pluralism." Sponsored by the *Office of the Dean*, William S. Richardson School of Law. Panelist with Professor Williamson Chang and Dr. Kekuni Blaisdell, University of Hawai`i at Manoa, Honolulu, April 16-17, 2004.

- "Mohala A`e: Blooming Forth," *Native Hawaiian Education Association's 5th Annual Conference.* Presented a workshop entitled "Hawaiian Epistemology." Windward Community College, Kane'ohe, March 23, 2004.

- "First Annual 'Ahahui o Hawai`i Kukakuka: Perspectives on Federal Recognition." Guest Speaker at a symposium concerning the Akaka Bill. Sponsored by the *'Ahahui o Hawai'i* (organization of native Hawaiian law students), University of Hawai`i at Manoa Richardson School of Law, Honolulu, March 12, 2004.

- "The Status of the Kingdom of Hawai`i." A debate with Professor Didrick Castberg, University of Hawai`i at Hilo (Political Science), and moderator Professor Todd Belt University of Hawai`i at Hilo (Political Science). Sponsored by the *Political Science Club*, University of Hawai`i at Hilo, Campus Center, March 11, 2004.

- "The Political History of the Hawaiian Kingdom: Past and Present." A presentation to the *Hawai`i Island Association of Hawaiian Organizations*, Queen Lili`uokalani Children's Center, Hilo, February 13, 2004.

- "Globalization and the Asia-Pacific Region." Panel with Dr. Noenoe Silva (Political Science). *East-West Center Spring 2004 Core Course*, Honolulu, February 4, 2004.

- Televised symposium entitled, "Ceded Lands." Other panelists included Professor Jon Van Dyke (Richardson School of Law) and Professor Lilikala Kame`eleihiwa (Center for Hawaiian Studies). Sponsored by the *Office of Hawaiian Affairs*, Wai'anae, August 2003.

- "Hawai`i's Road to International Recovery, II." Sponsored by *Kipuka*, University of Hawai`i at Hilo, September 25, 2003.

- "An Analysis of Tenancy, Title, and Landholding in Old Hawai'i." Sponsored by *Kipuka*, University of Hawai`i at Hilo, September 26, 2002.

- "The Hawaiian Kingdom in Arbitration Proceedings at the Permanent Court of Arbitration, The Hague, Nethelrands." A presentation at the 6th World Indigenous Peoples Conference on Education, Stoney Park, Morley, Alberta, Canada, August 6, 2002.

- "The Hawaiian Kingdom and the United States of America: A State to State Relationship." *Reclaiming the Legacy*, U.S. National Archives and Records Administration, University of San Francisco, May 4, 2002

- "Hawai`i's Road to International Recovery." Sponsored by *Kipuka*, University of Hawai`i at Hilo, April 11, 2002.

- "Hawai`i's Road to International Recovery," a presentation to the Officers Corps of the 25th Infantry Division, U.S. Army, Officer's Club, Schofield Barracks, Wahiawa, February 2001.

- "Lance Larsen vs. the Hawaiian Kingdom," presentation to the *Native Hawaiian Bar Association*, quarterly meeting, Kana`ina Building, Honolulu, 2001.

- "Hawaiian Political History," *Hawai`i Community College*, Hilo, March 5, 2001.

- "The History of the Hawaiian Kingdom," A guest speaker at the *Aloha March* rally in Washington, D.C., August 12, 1998.

- Symposium entitled*,* "Human Rights and the Hawaiian Kingdom on the occasion of the 50th anniversary of the Universal Declaration of Human Rights*."* Other panelist included Francis Boyle (Professor of International Law, University of Illinois), Mililani Trask (Trustee, Office of Hawaiian Affairs), Richard Grass (Lakota Sioux Nation), and Ron Barnes (Tununak Traditional Elders Council, Alaska). University of Hawai`i at Hilo, April 16, 1998.

- Symposium entitled*,* "Perfect Title Company: Scam or Restoration." Sponsored by the *Hawai`i Developers Council*, Hawai`i Prince Hotel, Honolulu, August 1997.

PUBLICATIONS:

Book, "Ua Mau Ke Ea-Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands." (Pu`a Foundation, Honolulu, 2011).

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

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

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

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

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

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

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

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

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

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

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

"Unpublished Short Essays" on line at http://hawaiiankingdom.org/info-nationals.shtml

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

VIDEO/RADIO:

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

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

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

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

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

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

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

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

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

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

- "The Hawaiian Kingdom"
- "What is a Hawaiian subject"
- "Attempted Overthrow of 1893"
- "The Annexation that Never Was"
- "Internal Laws of the United States"
- "Supreme Courts and International Courts"
- "U.S. Senate debate: Apology resolution, Oct. 1993"

MILITARY:

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

GENERAL DATA:

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

EXHIBIT “2”

THE CONTINUITY OF THE HAWAIIAN STATE AND THE LEGITIMACY OF THE *ACTING* GOVERNMENT OF THE HAWAIIAN KINGDOM

August 4, 2013

By David Keanu Sai, Ph.D.*

1. THE BRIEF

1.1. It has been 120 years since the United States of America, hereafter referred to as "United States," illegally overthrew the government of the Hawaiian Kingdom on January 17, 1893, and claimed to have annexed the Hawaiian Islands in 1898. Much has occurred since, but an exhaustive legal analysis has been lacking, to say the least, that could serve to clarify and qualify matters that have significant and profound legal consequences within the Hawaiian Islands and abroad. At present, there are three levels of government here in the Islands: first, the Federal government of the United States; second, the State of Hawai'i government; and, third, the County governments on the Islands of Hawai'i, Maui, O'ahu, and Kaua'i. The claim of sovereignty by the United States over the Hawaiian Islands underpins the authority of these governments. If this claim were answered in the negative, it would consequently render these governments in the Hawaiian Islands "self-declared" and their authority "unfounded." Furthermore, where then would the sovereignty lie, and is there a government that can be regarded legitimate? The answer to this question does not lie within the purview of politics, but rather on the objective principles and rules of international law together with actions taken by the *acting* government of the Hawaiian Kingdom that gradually developed, through time, into a customary right of legitimacy.

1.2. In order to address these matters, this Brief will answer two underlying issues:

A. Whether the Hawaiian Kingdom continues to exist an independent State and a subject of International Law, which also addresses the United States' claim of sovereignty over the Hawaiian Islands?

B. Whether the present *acting* government may be regarded as the legitimate government of the Hawaiian Kingdom with a customary right to represent the Hawaiian State?

---

* Dr. Sai has a Ph.D. in political science from the University of Hawai'i at Manoa. He currently serves as the Ambassador-at-large for the *acting* government of the Hawaiian Kingdom. This brief includes portions of a brief authored by Dr. Matthew Craven for the *acting* government of the Hawaiian Kingdom, July 12, 2002. Dr. Craven has a Ph.D. in law from the University of Nottingham. He is currently Professor of International Law, Dean of the Faculty of Law and Social Science, University of London, School of Oriental and African Studies.

1.3. Since the *acting* government's claim to be the legitimate governmental authority in the Hawaiian Islands, it follows that the continuity of the Hawaiian Kingdom as an independent State and subject of international law is *condicio sine qua non*. Furthermore, while continuity underpins the *acting* government's claim to act as the legitimate authority, it does not automatically confer international recognition under international law. It is therefore necessary to examine first the question of Hawaiian State continuity, which will include the United States of America's claim as a successor State, then followed by an examination of governmental authority displayed by the *acting* government as the legitimate authority.

A. THE CONTINUITY OF THE HAWAIIAN KINGDOM

2. *GENERAL CONSIDERATIONS*

2.1. The issue of State continuity usually arises in cases in which some element of the State has undergone some significant transformation, such as changes in its territory or in its form of government. A claim as to State continuity is essentially a claim as to the continued independent existence of a State for purposes of international law in spite of such changes. It is predicated, in that regard, upon an insistence that the State's legal identity has remained intact. If the State concerned retains its identity it can be considered to "continue" and *vice versa*. Discontinuity, by contrast, supposes that the identity of the State has been lost or fundamentally altered in such a way that it has ceased to exist as an independent State and, as a consequence, rights of sovereignty in relation to territory and population have been assumed by another "successor" State to the extent provided by the rules of succession. At its heart, therefore, the issue of State continuity is concerned with the parameters of a State's existence and demise, or extinction, in international law.

2.2. The claim of State continuity on the part of the Hawaiian Kingdom has to be opposed as against a claim by the United States as to its succession. It is apparent, however, that this opposition is not a strict one. Principles of succession may operate even in cases where continuity is not called into question, such as with the cession of a portion of territory from one State to another, or occasionally in case of unification. Continuity and succession are, in other words, not always mutually exclusive but might operate in tandem. It is evident, furthermore, that the principles of continuity and succession may not actually differ a great deal in terms of their effect.

2.3. Even if it is relatively clear as to when States may be said to come into being for purposes of international law, the converse is far from being the case. Beyond the theoretical circumstance in which a body politic has dissolved, *e.g.* by submergence of the territory or the dispersal of the population, it is apparent that all cases of putative extinction will arise in cases where certain changes of a material nature have occurred—such as a change in government

and change in the territorial configuration of the State. The difficulty, however, is in determining when such changes are merely incidental, leaving intact the identity of the State, and when they are to be regarded as fundamental going to the heart of that identity. It is evident, moreover, that States are complex political communities possessing various attributes of an abstract nature which vary in space as well as time, and, as such, determining the point at which changes in those attributes are such as to affect the State's identity will inevitably call for very fine distinctions.

2.4. It is generally held, nevertheless, that there exist several uncontroversial principles that have some bearing upon the issue of continuity. These are essentially threefold, all of which assume an essentially negative form. First, that the continuity of the State is not affected by changes in government even if of a revolutionary nature. Secondly, that continuity is not affected by territorial acquisition or loss, and finally that it is not affected by military occupation. Crawford points out that,

> "There is a strong presumption that the State continues to exist, with its rights and obligations, despite revolutionary changes in government, or despite a period in which there is no, or no effective, government. Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[1]

2.5. Each of these principles reflects upon one of the key incidents of statehood—territory, government (legal order) and independence—making clear that the issue of continuity is essentially one concerned with the existence of States: unless one or more of the key constituents of Statehood are entirely and permanently lost, State identity will be retained. Their negative formulation, furthermore, implies that there exists a general presumption of continuity. As Hall was to express the point, a State retains its identity

> "so long as the corporate person undergoes no change which essentially modifies it from the point of view of its international relations, and with reference to them it is evident that no change is essential which leaves untouched the capacity of the state to give effect to its general legal obligations or to carry out its special contracts."[2]

The only exception to this general principle is to be found in case of multiple changes of a less than total nature, such as where a revolutionary change in

[1] JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 34 (2nd ed., 2006).
[2] WILLIAM EDWARD HALL, A TREATISE ON INTERNATIONAL LAW 22 (4th ed. 1895).

government is accompanied by a broad change in the territorial delimitation of the State.[3]

2.6. If one were to speak about a presumption of continuity, one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains. It might be objected that formally speaking, the survival or otherwise of a State should be regarded as independent of the legitimacy of any claims to its territory on the part of other States. It is commonly recognized that a State does not cease to be such merely in virtue of the existence of legitimate claims over part or parts of its territory. Nevertheless, where those claims comprise the entirety of the territory of the State, as they do in case of Hawai'i, and when they are accompanied by effective governance to the exclusion of the claimant, it is difficult, if not impossible, to separate the two questions. The survival of the Hawaiian Kingdom is, it seems, premised upon the "legal" basis of present or past United States claims to sovereignty over the Islands.

2.7. In light of such considerations, any claim to State continuity will be dependent upon the establishment of two legal facts: *first*, that the State in question existed as a recognized entity for purposes of international law at some relevant point in history; and, *secondly,* that intervening events have not been such as to deprive it of that status. It should be made very clear, however, that the issue is not simply one of "observable" or "tangible facts," but more specifically of "legally relevant facts." It is not a case, in other words, simply of observing how power or control has been exercised in relation to persons or territory, but of determining the scope of "authority," which is understood as "a legal entitlement to exercise power and control." Authority differs from mere control by not only being essentially rule governed, but also in virtue of the fact that it is not always entirely dependent upon the exercise of that control. As Arbitrator Huber noted in the *Island of Palmas Case*:

> "Manifestations of sovereignty assume… different forms according to conditions of time and place. Although continuous in principle, sovereignty cannot be exercised in fact at every moment on every point of a territory. The intermittence and discontinuity compatible with the maintenance of the right necessarily differ according as inhabited or uninhabited regions are involved, or regions enclosed within territories in which sovereignty is incontestably displayed or again regions accessible from, for instance, the high seas."[4]

[3] *See* generally, KRYSTYNA MAREK, IDENTITY AND CONTINUITY OF STATES IN PUBLIC INTERNATIONAL LAW (2nd ed. 1968).
[4] *Island of Palmas Case (Netherlands v. United States)* 2 R.I.A.A. 829.

Thus, while "the continuous and peaceful display of territorial sovereignty" remains an important measure for determining entitlements in cases where title is disputed, or where "no conventional line of sufficient topographical precision exists," it is not always an indispensable prerequisite for legal title. This has become all the more apparent since the prohibition on the annexation of territory became firmly implanted in international law, and with it the acceptance that certain factual situations will not be accorded legal recognition, *ex inuria ius non oritur*.

3. *THE STATUS OF THE HAWAIIAN KINGDOM AS A SUBJECT OF INTERNATIONAL LAW*

3.1. When the United Kingdom and France formally recognized the Hawaiian Kingdom as an "independent state" at the Court of London on November 28, 1843,[5] and later formally recognized by the United States of America on July 6, 1844 by letter to the Hawaiian government from Secretary of State John C. Calhoun,[6] the Hawaiian State was admitted into the Family of Nations. Since its recognition, the Hawaiian Kingdom entered into extensive treaty relations with a variety of States establishing diplomatic relations and trade agreements.[7] To quote the *dictum* of the Permanent Court of Arbitration in 2001:

> "A perusal of the material discloses that in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[8]

Additionally, the Hawaiian Kingdom became a full member of the Universal Postal Union on January 1, 1882.

3.2. As an independent State, the Hawaiian Kingdom, along with other independent States within the Family of Nations, obtained "international personality" and, as such, all independent States "are regarded equal, and the

[5] The Joint Declaration can be accessed online at: http://hawaiiankingdom.org/pdf/Annex%202.pdf.
[6] The Letter can be accessed online at: http://hawaiiankingdom.org/pdf/Annex%203.pdf.
[7] The Hawaiian Kingdom entered into treaties with Austria-Hungary, June 18, 1875; Belgium, October 4, 1862; Bremen (succeeded by Germany), March 27, 1854; Denmark, October 19, 1846; France, September 8, 1858; French Tahiti, November 24, 1853; Germany, March 25, 1879; New South Wales (now Australia), March 10, 1874; Hamburg (succeeded by Germany), January 8, 1848); Italy, July 22, 1863; Japan, August 19, 1871, January 28, 1886; Netherlands, October 16, 1862; Portugal, May 5, 1882; Russia, June 19, 1869; Samoa, March 20, 1887; Spain, October 9, 1863; Sweden-Norway (now separate States), April 5, 1855; and Switzerland, July 20, 1864; the United Kingdom of Great Britain and Northern Ireland) March 26, 1846; and the United States of America, December 20, 1849, January 13, 1875, September 11, 1883, December 6, 1884. These treaties can be accessed online at: http://hawaiiankingdom.org/UN_Protest_Annexes.shtml.
[8] *Larsen v. Hawaiian Kingdom*, 119 INT'L L. REP. 566, 581 (2001), *reprinted in* 1 HAW. J. L. & POL. 299 (Summer 2004).

rights of each not deemed to be dependent upon the possession of power to insure their enforcement."[9] According to Dickinson, the

> "principle of equality has an important legal significance in the modern law of nations. It is the expression of two important legal principles. The first of these may be called the equal protection of the law or equality before the law. …The second principle is usually described as equality of rights and obligations or more often as equality of rights."[10]

International personality is defined as "the capacity to be bearer of rights and duties under international law."[11] Crawford, however, distinguishes between "general" and "special" legal personality. The former "arises against the world (*erga omnes*)," and the latter "binds only consenting States."[12] As an independent State, the Hawaiian Kingdom, like the United States of America, has both "general" legal personality under international law as well as "special" legal personality under the 1893 executive agreements that bind both the Hawaiian Kingdom and the United States to certain duties and obligations as hereinafter described.

3.3. The consequences of statehood at that time were several. States were deemed to be sovereign not only in a descriptive sense, but were also regarded as being "entitled" to sovereignty. This entailed, among other things, the rights to free choice of government, territorial inviolability, self-preservation, free development of natural resources, of acquisition and of absolute jurisdiction over all persons and things within the territory of the State.[13] It was, however, admitted that intervention by another State was permissible in certain prescribed circumstances such as for purposes of self-preservation, for purposes of fulfilling legal engagements, or of opposing wrongdoing. Although intervention was not absolutely prohibited in this regard, it was generally confined as regards the specified justifications. As Hall remarked, "The legality of an intervention must depend on the power of the intervening state to show that its action is sanctioned by some principle which can, and in the particular case does, take precedence of it."[14] A desire for simple aggrandizement of territory did not fall within these terms, and intervention for purposes of supporting one party in a civil war was often regarded as unlawful.[15] In any case, the right of independence was regarded as so fundamental that any action against it "must be looked upon with disfavor."[16]

---

[9] CHARLES CHENEY HYDE, INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED BY THE UNTIED STATES 20 (Vol. I, 1922).
[10] EDWIN DEWITT DICKINSON, THE EQUALITY OF STATES IN INTERNATIONAL LAW 335 (1920).
[11] SCHWARZENBERGER, A MANUAL OF INTERNATIONAL LAW 53 (6th ed., 1976).
[12] *See* CRAWFORD, *supra* note 1, at 30.
[13] ROBERT PHILLIMORE, COMMENTARIES UPON INTERNATIONAL LAW, VOL. I, 216 (1879).
[14] *See* HALL, *supra* note 2, at 298.
[15] THOMAS LAWRENCE, PRINCIPLES OF INTERNATIONAL LAW 134 (4th ed. 1913).
[16] *See* HALL, *supra* note 2, at 298.

3.4. "Governmental authority," states Crawford, "is the basis for normal inter-State relations; what is an act of a State is defined primarily by reference to its organs of government, legislative, executive or judicial."[17] On January 17, 1893, Queen Lili'uokalani, who was constitutionally vested with the "executive power" under Article 31 of the Hawaiian constitution,[18] was unable to apprehend certain insurgents calling themselves the provisional government without armed conflict between United States troops, who were illegally landed by the United States Legation to protect the insurgents, and the Hawaiian police force headed by Marshal Charles Wilson. She was forced to temporarily assign her executive power to the President of the United States under threat of war calling for an investigation of its diplomat and military commanders who have intervened in the internal affairs of the Hawaiian Kingdom, and, thereafter, restore the government.[19] Upon receipt of the Queen's diplomatic protest, United States President Cleveland initiated an investigation by first withdrawing a treaty, which provided for the cession of Hawaiian territory, from the United States Senate, and appointed a Special Commissioner, James Blount, to travel to the Hawaiian Islands in order to provide reports to the United States Secretary of State Walter Gresham. Blount reported that, "in pursuance of a prearranged plan [between the insurgents, claiming to be a government, and the U.S. Legation], the Government thus established hastened off commissioners to Washington to make a treaty for the purpose of annexing the Hawaiian Islands to the United States."[20]

3.5. The investigation concluded that the United States Legation accredited to the Hawaiian Kingdom, together with United States Marines and Naval personnel, were directly responsible for the illegal overthrow of the Hawaiian government with the ultimate goal of transferring the Hawaiian Islands to the

---

[17] *See* CRAWFORD, *supra* note 1, at 56.

[18] Hawaiian constitution, art. 31, provides: "The person of the King is inviolable and sacred. His Ministers are responsible. To the King belongs the executive power. All laws that have passed the Legislative Assembly, shall require His Majesty's signature in order to their validity" The constitution can be accessed online at: http://hawaiiankingdom.org/pdf/Annex%204.pdf.

[19] The diplomatic protest stated, "I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom. That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government. Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands."

[20] United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai'i: 1894-95, (Government Printing Office 1895), 587, [hereafter Executive Documents]. Reprinted at 1 HAW. J. L. & POL. 136 (Summer 2004).

United States from an installed puppet government.[21] The President acknowledged that the

> "military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawai'i or for the *bona fide* purpose of protecting the imperiled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at that time was undisputed and was both the *de facto* and the *de jure* government."[22]

> "When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in a manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*."[23]

The investigation also detailed the culpability of the United States government in violating international laws, as well as Hawaiian State territorial sovereignty and concluded it must provide *restitutio in integrum*—restoration to the original situation before the United States intervention occurred on January 16, 1893.

3.6. Through negotiations and *exchange of notes* between the Queen and the new United States Minister Plenipotentiary Albert Willis, assigned to the Hawaiian Islands, settlement for the illegal overthrow of the Hawaiian government was achieved by executive agreement. On the part of the United States, the President committed to restore the government as it stood before the landing of United States troops on January 16, 1893, and, thereafter, on the part of the Hawaiian Kingdom, the Queen committed to grant amnesty to the insurgents and assume all obligations of the self-proclaimed provisional government. Myers explains, "*Exchange of notes* is the most flexible form of a treaty… The exchange consists of an offer and an acceptance… The offering instrument contains a text of the proposed agreement and the acceptance invariably repeats it verbatim, with assent."[24] According to Garner,

> "Agreements in the form of an *exchange of notes* between certain high officials acting on behalf of States, usually their Ministers of Foreign Affairs or diplomatic representatives are numerous… They are employed for a variety of purposes and, like instruments which are designated as 'treaties', they may deal with any matter which is a proper subject of international regulation. One of their most common objects is to record the understandings of the parties to a treaty which they have previously entered into; but they may record an entirely new agreement, sometimes one which has been reached as a result of

[21] *Id*. at 567.
[22] *Id*., at 451.
[23] *Id*., at 453.
[24] Denys P. Myers, *The Names and Scope of Treaties*, 51 AM. J. INT'L L. 590 (1957).

> negotiation. While the purpose of an agreement effected by any *exchange of notes* may not differ from that of instruments designated by other names, it is strikingly different in its form from a 'treaty' or a 'convention.' Unlike a treaty, the relations which it establishes or seeks to establish is recorded, not in a single highly formalized instrument, but in two or more letters usually called 'notes,' signed by Ministers or other officials."[25]

The first executive agreement, by *exchange of notes*, was the temporary and conditional assignment of executive power (police power) from the Queen to the President on January 17, 1893, and the acceptance of the assignment by the President on March 9, 1893 when he initiated the investigation. The second executive agreement, by *exchange of notes*, was the President's "offer" to restore the *de jure* government on condition that the Queen would commit to grant amnesty to the insurgents on November 13, 1893, and the "acceptance" by the Queen of this condition on December 18, 1893. The two executive agreements are referred to herein as the *Lili'uokalani assignment* and the *Agreement of restoration*, respectively.

3.7. By virtue of the *Lili'uokalani assignment*, executive power (police power) of the Hawaiian Kingdom is temporarily vested in the President of the United States to faithfully administer Hawaiian Kingdom law, until the Hawaiian Kingdom government is restored pursuant to the *Agreement of restoration*, whereby the executive power is reassigned and thereafter the Monarch, or its successor, to grant amnesty. The failure of Congress to authorize the President to use force in carrying out these agreements did not diminish the validity of the *Lili'uokalani assignment* and the *Agreement of restoration*. Despite over a century of non-compliance, these executive agreements remain binding upon the office of President of the United States to date. According to Wright, the President binds "himself and his successors in office by executive agreements."[26]

3.8. President Cleveland failed to follow through in his commitment to administer Hawaiian law and re-instate the *de jure* government as a result of partisan wrangling in the United States Congress. In a deliberate move to further isolate the Hawaiian Kingdom from any assistance by other States and treaty partners and to reinforce and protect the puppet regime installed by United States officials, the Senate and House of Representatives each passed similar resolutions in 1894 strongly warning other States "that any intervention in the political affairs of these islands by any other Government will be regarded as an act unfriendly to the United States."[27] Although the Hawaiian government was not restored and the country thrown into civil unrest as a result, the continuity of the Hawaiian State was nevertheless maintained.

---

[25] 29 AM. J. INT'L L., Supplement, 698 (1935).
[26] QUINCY WRIGHT, THE CONTROL OF FOREIGN RELATIONS, 235 (1922).
[27] Senate Resolution, May 31, 1894, 53rd Congress, 2nd Session, vol. 26.

3.9. Five years passed before Cleveland's presidential successor, William McKinley, entered into a second treaty of cession with the same individuals who participated in the illegal overthrow with the United States legation in 1893, and were now calling themselves the Republic of Hawai'i. This second treaty was signed on June 16, 1897 in Washington, D.C., but would "be taken up immediately upon the convening of Congress next December."[28]

3.10. Queen Lili'uokalani was in the United States at the time of the signing of the treaty and protested the second annexation attempt of the country. While in Washington, D.C., the Queen filed a diplomatic protest with the United States Department of State on June 17, 1897. The Queen stated, in part:

> I, Lili'uokalani of Hawai'i, by the will of God named heir apparent on the tenth day of April, A.D. 1877, and by the grace of God Queen of the Hawaiian Islands on the seventeenth day of January, A.D. 1893, do hereby protest against the ratification of a certain treaty, which, so I am informed, has been signed at Washington by Messrs. Hatch, Thurston, and Kinney, purporting to cede those Islands to the territory and dominion of the United States. I declare such a treaty to be an act of wrong toward the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, in violation of international rights both toward my people and toward friendly nations with whom they have made treaties, the perpetuation of the fraud whereby the constitutional government was overthrown, and, finally, an act of gross injustice to me.[29]

3.11. Hawaiian political organizations in the Islands filed additional protests with the Department of State in Washington, D.C. These organizations were the Men and Women's Hawaiian Patriotic League (Hui Aloha 'Aina), and the Hawaiian Political Association (Hui Kalai'aina).[30] In addition, a petition of 21,269 signatures of Hawaiian subjects and resident aliens protesting annexation was filed with the Senate when it convened in December 1897.[31] As a result of these protests, the Senate was unable to garner enough votes to ratify the so-called treaty. Unable to procure a treaty of cession from the Hawaiian government acquiring the Hawaiian Islands as required by international law, Congress unilaterally enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War.[32] The territorial limitation of Congressional laws are indisputable, and to quote from the United States Supreme Court:

---

[28] "Hawaiian Treaty to Wait—Senator Morgan Suggests that It Be Taken Up at This Session Without Result." *The New York Times*, 3 (July 25, 1897).
[29] LILI'UOKALANI, HAWAI'I'S STORY BY HAWAI'I'S QUEEN, 354 (1964); Protest *reprinted in* 1 HAW. J. L. & POL. 227 (Summer 2004).
[30] These protests can be accessed online at: http://hawaiiankingdom.org/pdf/Annex%2018.pdf.
[31] The signature petition can be accessed online at: http://hawaiiankingdom.org/pdf/Annex%2019.pdf.
[32] 30 U.S. Stat. 750.

> "Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens…, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law. As a member of the family of nations, the right and power of the United States in that field are equal to the right and power of the other members of the international family. Otherwise, the United States is not completely sovereign."[33]

Many government officials and constitutional scholars were at a loss in explaining how a joint resolution could have extra-territorial force in annexing Hawai'i, a foreign and sovereign State, because during the 19th century, as Born states, "American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction."[34] During the debate in Congress, Representative Thomas H. Ball (D-Texas) characterized the annexation of the Hawaiian State by joint resolution as "a deliberate attempt to do unlawfully that which can not be lawfully done."[35] The citizenry and residents of the Hawaiian Kingdom also understood the illegality of the joint resolution. On October 20, 1900, the following editorial was published in the Maui News newspaper making reference to statements made by Thomas Clark who was formerly British, but acquired Hawaiian citizenship through naturalization in 1867. Clark was also a signatory to the 21,269 signature petition against the treaty of annexation that was before the United States Senate.

> Thomas Clark, a candidate for Territorial senator from Maui, holds that it was an unconstitutional proceeding on the part of the United States to annex the Islands without a treaty, and that as a matter of fact, the Island[s] are not annexed, and cannot be, and that if the democrats come in to power they will show the thing up in its true light and demonstrate that…the Islands are de facto independent at the present time.[36]

3.12. The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War, and the occupation was justified as a military necessity in order to reinforce and supply the troops that have been occupying the Spanish colonies of Guam and the Philippines since 1 May 1898. The justification as a war measure was clearly displayed in a secret session of the United States Senate on May 31, 1898.[37] Following the close of the Spanish-American War by the Treaty of Paris,[38] United States troops remained in the Hawaiian Islands and continued its occupation to date in

[33] *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).
[34] GARY BORN, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS 493 (3rd ed. 1996).
[35] 31 CONG. REC. 5975 (1898).
[36] The Maui News article can be accessed online at: http://hawaiiankingdom.org/blog/?p=189.
[37] 1 HAW. J. L. & POL. 230 (Summer 2004).
[38] 30 U.S. Stat. 1754.

violation of international law and the 1893 *Lili'uokalani assignment* and the *Agreement of restoration*. The United States Supreme Court has also confirmed that military occupation, which is deemed provisional, does not transfer sovereignty of the occupied State to the occupant State even when the *de jure* sovereign is deprived of power to exercise its right within the occupied territory.[39] Hyde states, in "consequence of belligerent occupation, the inhabitants of the district find themselves subjected to a new and peculiar relationship to an alien ruler to whom obedience is due."[40] In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i*,[41] and shortly thereafter, intentionally sought to "Americanize" the inhabitants of the Hawaiian Kingdom politically, culturally, socially, and economically. To accomplish this, a plan was instituted in 1906 by the Territorial government, titled "Programme for Patriotic Exercises in the Public Schools, Adopted by the Department of Public Instruction,"[42] to denationalize the children of the Hawaiian Islands through the public schools on a massive scale. *Harper's Weekly* reported:

> "At the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which surrounds the building. …Out upon the lawn marched the children, two by two, just as precise and orderly as you find them at home. With the ease that comes of long practice the classes marched and counter-marched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet about their heads. …'Attention!' Mrs. Fraser commanded. The little regiment stood fast, arms at side, shoulders back, chests out, heads up, and every eye fixed upon the red, white and blue emblem that waived protectingly over them. 'Salute!' was the principal's next command. Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice:

---

[39] *Thirty Hogsheads of Sugar v. Boyle*, 13 U.S. 191 (1815); *United States v. Rice*, 17 U.S. 246 (1819); *Flemming v. Page*, 50 U.S. 603 (1850); *see* also United States Army Field Manual 27-10,

> *Section 358—Occupation Does Not Transfer Sovereignty*. Being an incident of war, military occupation confers upon the invading force the means of exercising control for 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, indispensible both to the inhabitants and to the occupying force. It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress.

[40] CHARLES CHENEY HYDE, INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 363 (Vol. II, 1922).

[41] 31 U.S. Stat. 141.

[42] The Progamme can be accessed from the United States Archives online at: http://ia700604.us.archive.org/17/items/programmeforpatr00hawa/programmeforpatr00hawa.pdf.

> 'We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!'[43]

The purpose of the plan was to obliterate any memory of the national character of the Hawaiian Kingdom the children may have and replace it, through indoctrination, with American patriotism. "Usurpation of sovereignty during military occupation" and "attempts to denationalize the inhabitants of occupied territory" was recognized as international crimes since 1919.[44] In the Nuremburg trials, these two crimes were collectively known as Germanization. Under the heading "Germanization of Occupied Territories," Count III(j) of the Nuremburg Indictment, it provides:

> "In certain occupied territories purportedly annexed to Germany the defendants methodically and pursuant to plan endeavored to assimilate those territories politically, culturally, socially, and economically into the German Reich. The defendants endeavored to obliterate the former national character of these territories. In pursuance of these plans and endeavors, the defendants forcibly deported inhabitants who were predominantly non-German and introduced thousands of German colonists. This plan included economic domination, physical conquest, installation of puppet governments, purported *de jure* annexation and enforced conscription into the German Armed Forces. This was carried out in most of the occupied countries including: Norway, France…Luxembourg, the Soviet Union, Denmark, Belgium, and Holland."[45]

Further usurping Hawaiian sovereignty, President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai'i into the Union*, hereinafter "Statehood Act."[46] These laws, which have no extraterritorial effect, stand in direct violation of the *Lili'uokalani assignment* and *Agreement restoration*, being international compacts, the 1907 Hague Convention, IV, and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV.

3.13. In 1946, prior to the passage of the Statehood Act, the United States further misrepresented its relationship with Hawai'i when its permanent representative to the United Nations identified Hawai'i as a non-self-governing territory under the administration of the United States since 1898. In accordance with Article 73(e) of the U.N. Charter, the United States

---

[43] WILLIAM INGLIS, *Hawai'i's Lesson to Headstrong California: How the Island Territory has solved the problem of dealing with its four thousand Japanese Public School children*, HARPER'S WEEKLY 227 (Feb. 16, 1907).
[44] *See* Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, *Report Presented to the Preliminary Peace Conference, March 29, 1919*, 14 Am. J. Int'l L. 95, at (1920).
[45] *See* Trial of the Major War Criminals before the International Military Tribunal, *Indictment*, vol. 1, at 27, 63 (Nuremberg, Germany, 1947).
[46] 73 U.S. Stat. 4.

permanent representative erroneously reported Hawai'i as a non-self-governing territory that was acknowledged in a resolution by United Nations General Assembly.[47] On June 4, 1952, the Secretary General of the United Nations reported information submitted to him by the permanent representative of the United States regarding American Samoa, Hawai'i, Puerto Rico and the Virgin Islands. [48] In this report, the United States made no mention that the Hawaiian Islands were an independent State since 1843 and that its government was illegally overthrown by U.S. forces, which was later settled by an executive agreement through *exchange of notes*. The representative also fails to disclose diplomatic protests that succeeded in preventing the second attempt to annex the Islands by a treaty of cession in 1897. Instead, the representative provides a picture of Hawai'i as a non-State nation, by stating:

> "The Hawaiian Islands were discovered by James Cook in 1778. At that time divided into several petty chieftainships, they were soon afterwards united into one kingdom. The Islands became an important port and recruiting point for the early fur and sandalwood traders in the North Pacific, and the principal field base for the extensive whaling trade. When whaling declined after 1860, sugar became the foundation of the economy, and was stimulated by a reciprocity treaty with the United States (1896).
>
> American missionaries went to Hawaii in 1820; they reduced the Hawaiian language to written form, established a school system, and gained great influence among the ruling chiefs. In contact with foreigners and western culture, the aboriginal population steadily declined. To replace this loss and to furnish labourers for the expanding sugar plantations, large-scale immigration was established.
>
> When later Hawaiian monarchs showed a tendency to revert to absolutism, political discords and economic stresses produced a revolutionary movement headed by men of foreign birth and ancestry. The Native monarch was overthrown in 1893, and a republic government established. Annexation to the United States was one aim of the revolutionists. After a delay of five years, annexation was accomplished.
>
> …The Hawaiian Islands, by virtue of the Joint Resolution of Annexation and the Hawaiian Organic Act, became an integral part of the United States and were given a territorial form of government which, in the United States political system, precedes statehood."[49]

---

[47] *Transmission of Information under Article 73e of the Charter*, December 14, 1946, United Nations General Assembly Resolution 66(I).
[48] *Information from Non-self-governing Territories: Summary and Analysis of Information Transmitted Under Article 73 e of the Charter. Report of the Secretary General: Summary of Information transmitted by the Government of the United States of America*, 4 June 1952, United Nations, Document A/2135.
[49] *Id.*, at 16-17.

3.14. In 1959, the Secretary General received a communication from the United States permanent representative that they will no longer transmit information regarding Hawai'i because it supposedly "became one of the United States under a new constitution taking affect on [August 21, 1959]."[50] This resulted in a General Assembly resolution stating it "Considers it appropriate that the transmission of information in respect of Alaska and Hawaii under Article 73e of the Charter should cease."[51] Evidence that the United Nations was not aware of Hawaiian independence since 1843 can be gleaned from the following statement by the United Nations.

> "Though the General Assembly considered that the manner in which Territories could become fully self-governing was primarily through the attainment of independence, it was observed in the Fourth Committee that the General Assembly had recognized in resolution 748 (VIII) that self-government could also be achieved by association with another State or group of States if the association was freely chosen and was on a basis of absolute equality. There was unanimous agreement that Alaska and Hawaii had attained a full measure of self-government and equal to that enjoyed by all other self-governing constituent states of the United States. Moreover, the people of Alaska and Hawaii had fully exercised their right to choose their own form of government."[52]

Although the United Nations passed two resolutions acknowledging Hawai'i to be a non-self-governing territory that has been under the administration of the United States of America since 1898 and was granted self-governance in 1959, it did not affect the continuity of the Hawaiian State because, foremost, United Nations resolutions are not binding on member States of the United Nations,[53] let alone a non-member State—the Hawaiian Kingdom. Crawford explains, "Of course, the General Assembly is not a legislature. Mostly its resolutions are only recommendations, and it has no capacity to impose new legal obligations on States."[54] Secondly, the information provided to the General Assembly by the United States was distorted and flawed. In *East Timor*, Portugal argued that resolutions of both the General Assembly and the Security Council acknowledged the status of East Timor as a non-self-governing territory and Portugal as the administering power and should be treated as "givens."[55] The International Court of Justice, however, did not agree and found

---

[50] *Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America*, United Nations, Document no. A/4226, at 99.
[51] *Cessation of the transmission of information under Article 73 e of the Charter in respect of Alaska and Hawaii*, December 12, 1959, United Nations General Assembly Resolution 1469 (XIV).
[52] *Repertory of Practice of United Nations Organs, Extracts relating to Article 73 of the Charter of the United Nations,* Supplement No. 1 (1955-1959), volume 3, at 200, para. 101.
[53] IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 14 (4th ed. 1990).
[54] *See* CRAWFORD, *supra* note 1, at 113.
[55] In *East Timor* (Portugal v. Australia) [1995] ICJ Rep. 90, at 103, para. 30.

> "that it cannot be inferred from the sole fact that the above-mentioned resolutions of the General Assembly and the Security Council refer to Portugal as the administrating Power of East Timor that they intended to establish an obligation on third States."[56]

Even more problematic is when the decisions embodied in the resolutions as "givens" are wrong. Acknowledging this possibility, Bowett states, "where a decision affects a State's legal rights or responsibilities, and can be shown to be unsupported by the facts, or based upon a quite erroneous view of the facts, or a clear error of law, the decision ought in principle to be set aside."[57] Öberg also concurs and acknowledges that resolutions "may have been made on the basis of partial information, where not all interested parties were heard, and/or too urgently for the facts to be objectively established."[58] As an example, Öberg cited Security Council Resolution 1530, March 11, 2004, that "misidentified the perpetrator of the bomb attacks carried out in Madrid, Spain, on the same day."[59]

4. *RECOGNIZED MODES OF EXTINCTION*

4.1. In light of the evident existence of Hawai'i as a sovereign State for some period of time prior to 1898, it would seem that the issue of continuity turns upon the question whether Hawai'i can be said to have subsequently ceased to exist according to the terms of international law. Current international law recognizes that a State may cease to exist in one of two scenarios: *first*, by means of that State's integration with another State in some form of union; or, *second*, by its dismemberment, such as in the case of the Socialist Federal Republic of Yugoslavia or Czechoslovakia. As will be seen, events in Hawai'i in 1898 are capable of being construed in several ways, but it is evident that the most obvious characterization was one of cession by joint resolution of the Congress.

4.2. Turning then to the law as it existed at the critical date of 1898, it was generally held that a State might cease to exist in one of three scenarios:

(a) By the destruction of its territory or by the extinction, dispersal or emigration of its population, which is a theoretical disposition.

(b) By the dissolution of the corpus of the State.[60]

---

[56] *Id*., at 104, para. 32.
[57] Derek Bowett, *The Impact of Security Council Decisions on Dispute Settlement Procedures*, 5 Eur. J. Int'l L. 89, 97 (1994).
[58] Marko Divac Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, 16(5) EUR. J. INT'L L. 879, 892 (2005).
[59] *Id*., at n. 82.
[60] Cases include the dissolution of the German Empire in 1805-6; the partition of the Pays-Bas in 1831 or of the Canton of Bale in 1833

(c) By the State's incorporation, union, or submission to another.[61]

4.3. Neither (a) nor (b) is applicable in the current scenario. In case of (c) commentators have often distinguished between two processes—one of which involved a voluntary act, *i.e.* union or incorporation, the other of which came about by non-consensual means, *i.e.* conquest and submission followed by annexation.[62] It is evident that annexation or "conquest" was regarded as a legitimate mode of acquiring title to territory,[63] and it would seem to follow that in case of total annexation—annexation of the entirety of the territory of a State, the defeated State would cease to exist.

4.4. Although annexation was regarded as a legitimate means of acquiring territory, it was recognized as taking a variety of forms.[64] It was apparent that a distinction was typically drawn between those cases in which, the annexation was implemented by a Treaty of Peace, and those which resulted from an essentially unilateral public declaration on the part of the annexing power after the defeat of the opposing State, which the former was at war with. The former would be governed by the particular terms of the treaty in question, and gave rise to a distinct type of title.[65] Since treaties were regarded as binding irrespective of the circumstances surrounding their conclusion and irrespective of the presence or absence of coercion,[66] title acquired in virtue of a peace treaty was considered to be essentially derivative, *i.e.* being transferred from one State to another. There was little, in other words, to distinguish title acquired by means of a treaty of peace backed by force, and a voluntary purchase of territory: in each case the extent of rights enjoyed by the successor were determined by the agreement itself. In case of conquest absent an agreed settlement, by contrast, title was thought to derive simply from the fact of military subjugation and was complete "from the time [the conqueror] proves his ability to maintain his sovereignty over his conquest, and manifests, by some authoritative act… his intention to retain it as part of his own territory."[67] What was required, in other words, was that the conflict be complete—acquisition of sovereignty *durante bello* being clearly excluded, and that the conqueror declare an intention to annex.[68]

---

[61] Cases include the incorporation of Cracow into Austria in 1846; the annexation of Nice and Savoy by France in 1860; the annexation of Hannover, Hesse, Nassau and Schleswig-Holstein and Frankfurt into Prussia in 1886.

[62] *See* J. Westlake, *The Nature and Extent of the Title by Conquest*, 17 L. Q. REV. 392 (1901).

[63] LASSA OPPENHEIM, INTERNATIONAL LAW, VOL. I, 288 (9th ed. 1996), Oppenheim remarks that "[a]s long as a Law of Nations has been in existence, the states as well as the vast majority of writers have recognized subjugation as a mode of acquiring territory."

[64] HENRY HALLECK, INTERNATIONAL LAW, 811 (1861); HENRY WHEATON, ELEMENTS OF INTERNATIONAL LAW II, c. iv, s. 165. (8th ed. 1866).

[65] See LAWRENCE, *supra* note 14, at 165-6 ("Title by conquest arises only when no formal international document transfers the territory to its new possessor.")

[66] Vienna Convention on the Law of Treaties, art. 52 (1969).

[67] HENRY HALLECK, INTERNATIONAL LAW, 468 (3rd ed. 1893).

[68] This point was of considerable importance following the Allied occupation of Germany in 1945.

4.5. What remained a matter of some dispute, however, was whether annexation by way of subjugation should be regarded as an original or derivative title to territory and, as such, whether it gave rise to rights in virtue of mere occupation, or rather more extensive rights in virtue of succession—a point of particular importance for possessions held in foreign territory.[69] Rivier, for example, took the view that conquest involved a three stage process: a) the extinction of the State in virtue of *debellatio* which b) rendered the territory *terra nullius* leading to c) the acquisition of title by means of occupation.[70] Title, in other words, was original, and rights of the occupants were limited to those, which they possessed perhaps under the doctrine *uti possidetis de facto*. Others, by contrast, seemed to assume some form of "transfer of title" as taking place, *i.e*. that conquest gave rise to a derivative title,[71] and concluded in consequence that the conqueror "becomes, as it were, the heir or universal successor of the defunct or extinguished State."[72] Much depended, in such circumstances, as to how the successor came to acquire title.

4.6. It should be pointed out, however, that even if annexation/conquest was generally regarded as a mode of acquiring territory, United States policy during this period was far more skeptical of such practice. As early as 1823 the United States had explicitly opposed, in the form of the Monroe Doctrine, the practice of European colonization[73] and in the First Pan-American Conference of 1889 and 1890 it had proposed a resolution to the effect that "the principle of conquest shall not…be recognized as admissible under American public law."[74] It had, furthermore, later taken the lead in adopting a policy of non-recognition of "any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928"[75] which was confirmed as a legal obligation in a resolution of the Assembly of the League of Nations in 1932. Even if such a policy was not to amount to a legally binding commitment on the part of the United States not to acquire territory by use or threat of force during the latter stages of the 19th century, there is the doctrine of estoppel that would operate to prevent the United States subsequently relying upon forcible annexation as a basis for claiming title to the Hawaiian Islands. Furthermore, annexation by conquest would not apply to the case at hand because the

[69] For an early version of this idea see EMERICH DE VATTEL, THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW, BK. III, SEC. 193-201 (1758, trans. C. Fenwick, 1916). C. BYNKERSHOEK, QUAESTIONUM JURIS PUBLICI LIBRI DUO, BK. I, 32-46 (1737, trans. Frank T., 1930).
[70] RIVIER, PRINCIPES DU DROIT DES GENS, VOL. I, 182 (1896).
[71] *See* PHILLIMORE, *supra* note 13, I, at 328.
[72] *See* HALLECK, *supra* note 67, at 495.
[73] "The American continents, by the free and independent conditions which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European Powers." James Monroe, Message to Congress, December 2, 1823.
[74] JOHN BASSET MOORE, A DIGEST OF INTERNATIONAL LAW, VOL. 1, 292 (1906).
[75] J.W. WHEELER-BENNETT (ED.), DOCUMENTS ON INTERNATIONAL AFFAIRS 1932 23 (1933). See also David Turns, *The Stimson Doctrine of Non-Recognition: Its Historical Genesis and Influence on Contemporary International Law*, 2 CHINESE J. INT'L L. 105-143 (2003).

Hawaiian Kingdom was never at war with the United States thereby preventing *debellatio* from arising as a mode of acquisition.

5. *THE FUNCTION OF ESTOPPEL*

5.1. The principle that a State cannot benefit from its own wrongful act is a general principle of international law referred to as estoppel.[76] The rationale for this rule derives from the *maxim pacta sunt servanda*—every treaty in force is binding upon the parties and must be performed by them in good faith,[77] and "operates so as to preclude a party from denying the truth of a statement of fact made previously by that party to another whereby that other has acted to his detriment."[78] According to MacGibbon, underlying "most formulations of the doctrine of estoppel in international law is the requirement that a State ought to be consistent in its attitude to a given factual or legal situation."[79] In municipal jurisdictions there are three forms of estoppel—estoppel by judgment as in matters of court decisions; estoppel by deed as in matters of written agreement or contract; and estoppel by conduct as in matters of statements and actions. Bowett states that these forms of estoppel, whether treated as a rule of evidence or as substantive law, is as much part of international law as they are in municipal law, and due to the diplomatic nature of States relations, he expands the second form of estoppel to include estoppel by "Treaty, Compromise, Exchange of Notes, or other Undertaking in Writing."[80] Brownlie states that because estoppel in international law rests on principles of good faith and consistency, it is "shorn of the technical features to be found in municipal law."[81] Bowett enumerates the three essentials establishing estoppel in international law:

> 1. The statement of fact must be clear and unambiguous.
> 2. The statement of fact must be made voluntarily, unconditionally, and must be authorized.
> 3. There must be reliance in good faith upon the statement either to the detriment of the party so relying on the statement or to the advantage of the party making the statement.[82]

To ensure consistency in State behavior, the Permanent Court of International Justice, in a number of cases, affirmed the principle "that a State cannot invoke its municipal law as a reason for failure to fulfill its international obligation."[83] This principle was later codified under Article 27 of the 1969

---

[76] WILLIAM EDWARD HALL, A TREATISE ON INTERNATIONAL LAW 383 (8th ed. 1924).
[77] *See* Vienna Convention, *supra* note 66, art. 26.
[78] D.W. Bowett, *Estoppel Before International Tribunals and its Relation to Acquiescence*, 33 BRIT. Y. B. INT'L L. 201 (1957).
[79] I.C. MacGibbon, *Estoppel in International Law*, 7 INT'L. & COMP. L. Q. 468 (1958).
[80] *See* Bowett, *supra* note 78, at 181.
[81] *See* BROWNLIE, *supra* note 53, at 641.
[82] See Bowett, *supra* note 78, at 202.
[83] *Id*., at 473.

Vienna Convention on the Law of Treaties, whereby "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[84] It is self-evident that the 1893 *Lili'uokalani assignment* and the *Agreement of restoration* meets the requirements of the first two essentials establishing estoppel, and, as for the third, reliance in good faith was clearly displayed and evidence in a memorial to President Cleveland by the Hawaiian Patriotic League on December 27, 1893. As stated in the memorial:

> "And while waiting for the result of [the investigation], with full confidence in the American honor, the Queen requested all her loyal subjects to remain absolutely quiet and passive, and to submit with patience to all the insults that have been since heaped upon both the Queen and the people by the usurping Government. The necessity of this attitude of absolute inactivity on the part of the Hawaiian people was further indorsed and emphasized by Commissioner Blount, so that, if the Hawaiians have held their peace in a manner that will vindicate their character as law-abiding citizens, yet it can not and must not be construed as evidence that they are apathetic or indifferent, or ready to acquiesce in the wrong and bow to the usurpers."[85]

5.2. Continued reliance was also displayed by the formal protests of the Queen and Hawaiian political organizations regarding the aforementioned second treaty of cession signed in Washington, D.C., on June 16, 1897. These protests were received and filed in the office of Secretary of State John Sherman and continue to remain a record of both dissent and evidence of reliance upon the conclusion of the investigation by President Cleveland and his obligation and commitment to *restitutio in integrum*—restoration of the *de jure* Hawaiian government. A memorial of the Hawaiian Patriotic League that was filed with the United States Hawaiian Commission for the creation of the territorial government appears to be the last "public" act of reliance made by a large majority of the Hawaiian citizenry.[86] The Commission was established on July 8, 1898 after President McKinley signed the joint resolution of annexation on July 7, 1898, and held meetings in Honolulu from August through September of 1898. The memorial, which was also printed in two Honolulu newspapers, one in the Hawaiian language[87] and the other in English,[88] stated, in part:

> WHEREAS: By memorial the people of Hawaii have protested against the consummation of an invasion of their political rights, and have fervently appealed to the President, the Congress and the People of the United States, to refrain from further participation in the wrongful annexation of Hawaii; and

---

[84] *See* Vienna Convention, *supra* note 66, art. 27.
[85] *See* Executive Documents, *supra* note 20, at 1295, reprinted in 1 HAW. J. L. & POL. 217 (Summer 2004).
[86] Munroe Smith, Record of Political Events, 13(4) POL. SCI. Q. 745, 752 (Dec. 1898).
[87] *Memoriala A Ka Lahui* (Memorial of the Citizenry), KE ALOHA AINA, Sept. 17, 1898, at 3.
[88] *What Monarchists Want*, THE HAWAIIAN STAR, Sept. 15, 1898, at 3.

> WHEREAS: The Declaration of American Independence expresses that Governments derive their just powers from the consent of the governed:
>
> THEREFORE, BE IT RESOLVED: That the representatives of a large and influential body of native Hawaiians, we solemnly pray that the constitutional government of the 16th day of January, A.D. 1893, be restored, under the protection of the United States of America.

This memorial clearly speaks to the people's understanding and reliance of the *Agreement of restoration* and the duties and obligations incurred by the United States even after the Islands were purportedly annexed.

5.3. There is no dispute between the United States and the Hawaiian Kingdom regarding the illegal overthrow of the *de jure* Hawaiian government, and the 1893 executive agreements—the *Lili'uokalani assignment* and the *Agreement of restoration*, constitutes evidence of final settlement. As such, the United States cannot benefit from its deliberate non-performance of its obligation of administering Hawaiian law and restoring the *de jure* government under the 1893 executive agreements over the reliance held by the Hawaiian Kingdom and its citizenry in good faith and to their detriment. Therefore, the United States is estopped from asserting any of the following claims:

> 1. Recognition of any pretended government other than the Hawaiian Kingdom as both the *de facto* and the *de jure* government of the Hawaiian Islands;
> 2. Annexation of the Hawaiian Islands by joint resolution in 1898;
> 3. Establishment of a territorial government in 1900;
> 4. Administration of the Hawaiian Islands as a non-self-governing territory since 1898 pursuant to Article 73(e) of the U.N. Charter;
> 5. Establishment of a State government in 1959; and,

The failure of the United States to restore the *de jure* government is a "breach of an international obligation," and, therefore, an international wrongful act. The severity of this breach has led to the unlawful seizure of Hawaiian independence, imposition of a foreign nationality upon the citizenry of an occupied State, mass migrations and settlement of foreign citizens, and the economic and military exploitation of Hawaiian territory—all stemming from the United States government's violation of international law and treaties. In a 1999 report for the United Nations Centennial of the First International Peace Conference, Greenwood states:

> Accommodation of change in the case of prolonged occupation must be within the framework of the core principles laid down in the Regulations on the Laws and Customs of War on Land and the Fourth Convention, in particular, the principle underlying much of the Regulations on the Laws and Customs of War on Land, namely

> that the occupying power may not exploit the occupied territories for the benefit of its own population.[89]

Despite the egregious violations of Hawaiian State sovereignty by the United States since January 16, 1893, the principle of estoppel not only serves as a shield that bars the United States from asserting any legal claim of sovereignty over the Hawaiian Islands, but also a shield that protects the continued existence of the Hawaiian Kingdom, the nationality of its citizenry, and its territorial integrity as they existed in 1893.

6. *A CLAIM OF TITLE OVER THE HAWAIIAN ISLANDS BY ACQUISITIVE PRESCRIPTION*

6.1. As pointed out above, the continuity of the Hawaiian State may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, which is not strictly limited to annexation. The United States, in other words, would be entitled to maintain its claim over the Hawaiian Islands so long as it could show some basis for asserting that claim other than merely its original claim of annexation in 1898. The strongest type of claim in this respect is the "continuous and peaceful display of territorial sovereignty." The emphasis given to the "continuous and peaceful display of territorial sovereignty" in international law derives in its origin from the doctrine of occupation, which allowed states to acquire title to territory that was effectively *terra nullius*. Occupation, in this form, is distinct from military occupation of another State's territory. It is apparent, however, and in line with the approach of the International Court of Justice in the *Western Sahara Case*,[90] that the Hawaiian Islands cannot be regarded as *terra nullius* for purpose of acquiring title by mere occupation. According to some, nevertheless, effective occupation may give rise to title by way of what is known as "acquisitive prescription."[91] As Hall maintained, title or sovereignty "by prescription arises out of a long continued possession, where no original source of proprietary right can be shown to exist, or where possession in the first instance being wrongful, the legitimate proprietor has neglected to assert his right, or has been unable to do so."[92] Johnson explains in more detail:

> "Acquisitive Prescription is the means by which, under international law, legal recognition is given to the right of a state to exercise sovereignty over land or sea territory in cases where that state has, in fact, exercised its authority in a continuous, uninterrupted, and peaceful manner over the area concerned for a sufficient period of time, provided that all other interested and affected states (in the case of land territory the previous possessor, in the case of sea territory

[89] CHRISTOPHER GREENWOOD, INTERNATIONAL HUMANITARIAN LAW (LAWS OF WAR): REVISED REPORT PREPARED FOR THE CENTENNIAL OF THE FIRST INTERNATIONAL PEACE CONFERENCE, PURSUANT TO UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS A/RES/52/154 AND A/RES/53/99, 47 (1999).
[90] I.C.J. Rep. 1975.
[91] For a discussion of the various approaches to this issue see OPPENHEIM, *supra* note 63, at 705-6.
[92] *See* HALL, *supra* note 76, at 143.

> neighboring states and other states whose maritime interests are affected) have acquiesced in this exercise of authority. Such acquiescence is implied in cases where the interested and affected states have failed within a reasonable time to refer the matter to the appropriate international organization or international tribunal or—exceptionally in cases where no such action was possible—have failed to manifest their opposition in a sufficiently positive manner through the instrumentality of diplomatic protests."[93]

Although no case before an international court or tribunal has unequivocally affirmed the existence of acquisitive prescription as a mode of acquiring title to territory,[94] and although Judge Moreno Quintana in his dissenting opinion in the *Rights of Passage* case[95] found no place for the concept in international law, there is considerable evidence that points in that direction. For example, the continuous and peaceful display of sovereignty, or some variant thereof, was emphasized as the basis for title in the *Minquiers and Ecrehos Case* (France v. United Kingdom),[96] the *Anglo-Norwegian Fisheries Case* (United Kingdom v. Norway)[97] and in the *Island of Palmas Arbitration* (United States v. Netherlands).[98]

6.2. If a claim to acquisitive prescription is to be maintained in relation to the Hawaiian Islands, various *indica* have to be considered including, for example, the length of time of effective and peaceful occupation, the extent of opposition to or acquiescence in that occupation, and, perhaps, the degree of recognition provided by third States. However, "no general rule [can] be laid down as regards the length of time and other circumstances which are necessary to create such a title by prescription. Everything [depends] upon the merits of the individual case."[99] As regards the temporal element, the United States could claim to have peacefully and continuously exercised governmental authority in relation to Hawai'i for over a century. This is somewhat more than was required for purposes of prescription in the *British Guiana-Venezuela Boundary Arbitration,* for example,[100] but it is clear that time alone is certainly not determinative. Similarly, in terms of the attitude of third States, it is evident that apart from the initial protest of the Japanese Government in 1897, none has opposed the extension of United States jurisdiction to the Hawaiian Islands. Indeed the majority of States may be said to have acquiesced in its claim to sovereignty in virtue of acceding to its exercise of sovereign prerogatives in respect of the Islands, but this

---

[93] D.H.N. Johnson, *Acquisitive Prescription in International Law*, 27 BRIT. Y. B. INT'L L. 332, 353 (1950).
[94] Prescription may be said to have been recognized in the *Chamizal Arbitration*, 5 AM. J. INT'L L. 782 (1911) 785; the *Grisbadana Arbitration* P.C.I.J. 1909; and the *Island of Palmas Arbitration*, *supra* note 5.
[95] I.C.J. Rep. 1960, at 6.
[96] I.C.J. Rep. 1953, at 47
[97] I.C.J. Rep. 1951, at 116.
[98] *See* Palmas arbitration, *supra* note 4.
[99] *See* OPPENHEIM, *supra* note 63, at 706.
[100] The arbitrators were instructed by their treaty terms of reference to allow title if based upon "adverse holding or prescription during a period of fifty years." 28 R.I.A.A (1899) 335.

acquiescence by other States was based on misleading and false information that was presented to the United Nations by the United States as before mentioned. It could be surmised, as well, that the United States misled other States regarding Hawai'i even prior to the establishment of the United Nations in 1945. It is important, however, not to attach too much emphasis to third party recognition. As Jennings points out, in case of adverse possession "[r]ecognition or acquiescence on the part of third States… must strictly be irrelevant."[101]

6.3. More difficult, in this regard, is the issue of acquiescence or protest as between the Hawaiian Kingdom and the United States. In the *Chamizal* Arbitration[102] it was held that the United States could not maintain a claim to the Chamizal tract by way of prescription in part because of the protests of the Mexican government. The Mexican government, in the view of the Commission, had done "all that could be reasonably required of it by way of protest against the illegal encroachment." Although it had not attempted to retrieve the land by force, the Commission pointed out that:

> "however much the Mexicans may have desired to take physical possession of the district, the result of any attempt to do so would have provoked scenes of violence and the Republic of Mexico can not be blamed for resorting to the milder forms of protest contained in its diplomatic correspondence."[103]

In other words, protesting in any way that might be "reasonably required" should effectively defeat a claim of acquisitive prescription.

6.4. Ultimately, a "claim" to prescription is not equal to a "title" by prescription, especially in light of the presumption of title being vested in the State the claim is made against. Johnson acknowledges this distinction when he states that the "length of time required for the establishment of a prescriptive title on the one hand, and the extent of the action required to prevent the establishment of a prescriptive title on the other hand, are invariably matters of fact to be decided by the international tribunal before which the matter is eventually brought for adjudication."[104] The United States has made no claim to acquisitive prescription before any international body, but, instead, has reported to the United Nations in 1952 the fraudulent claim that the "Hawaiian Islands, by virtue of the Joint Resolution of Annexation and the Hawaiian Organic Act, became an integral part of the United States and were given a territorial form of government which, in the United States political system, precedes statehood."[105] Furthermore, according to Fauchille:

---

[101] *See* Oppenheim, *supra* note 63, at 39.
[102] *The Chamizal Arbitration Between the United States and Mexico*, 5 AM. J. INT'L L. 782 (1911).
[103] *Id*., at 807.
[104] *See* Johnson, *supra* note 93, at 354.
[105] *See Communication from the United States of America*, *supra* note 50.

> "a state cannot acquire a title by acquisitive prescription if, although administering a territory, it admits that the sovereignty over that territory belongs to another state. The reason for this is that the acquiescence of the other state, which is a *sine qua non* of acquisitive prescription, is lacking. Or to put in another way, the administering state is by its own admission estopped from claiming a prescriptive title to the territory."

When President Cleveland accepted, by *exchange of notes*, the police power from the Queen under threat of war, and by virtue of that assignment initiated a presidential investigation that concluded the Queen, as Head of State, was both the *de fact* and *de jure* government of the Hawaiian Islands, and subsequently entered into a second executive agreement to restore the government on condition that the Queen or her successor in office would grant amnesty to the insurgents, the United States admitted that title or sovereignty over the Hawaiian Islands remained vested in the Hawaiian Kingdom and no other. Thus, it is impossible for the United States to claim to have acquired title to the Hawaiian Islands in 1898 from the government of the so-called Republic of Hawai'i, because the Republic of Hawai'i, by the United States' own admission, was "self-declared."[106] Furthermore, by the terms of the 1893 executive agreements—the *Lili'uokalani assignment* and the *Agreement of restoration*, the United States recognized the continuing sovereignty of the Hawaiian Kingdom over the Hawaiian Islands despite its government having yet to be restored under the agreement. Therefore, the presumption may also be based on the general principle of international law, *pacta sunt servanda*, whereby an agreement in force is binding upon the parties and must be performed by them in good faith.

B. THE LEGITIMACY OF THE *ACTING* GOVERNMENT OF THE HAWAIIAN KINGDOM

7. *GENERAL CONSIDERATIONS*

7.1. The presumption that the Hawaiian Kingdom continues to exist as a State under occupation is not entirely unrelated to the existence of an entity claiming to be the effective and legitimate government. A State is a "body of people occupying a definite territory and politically organized"[107] under one government, being the "agency of the state,"[108] that exercises sovereignty, which is the "supreme, absolute and uncontrollable power by which an independent state is governed."[109] In other words, sovereignty, both internal

---

[106] *Joint Resolution To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawai'i*, 103d Cong., 107 U.S. Stat. 1510 (1993), *reprinted in* 1 HAW. J. L. & POL. 290 (Summer 2004). The resolution stated, in part, "*Whereas*, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States."
[107] BLACK'S LAW DICTIONARY 1407 (6th ed. 1990).
[108] *Id*. at 695.
[109] *Id*. at 1396.

and external, is an attribute of an independent State, while the government exercising sovereignty is the State's physical agent. Hoffman emphasizes that a government "is not a State any more than man's words are the man himself," but "is simply an expression of the State, an agent for putting into execution the will of the State." [110] Wright also concluded, "international law distinguishes between a government and the state it governs."[111] Therefore, a sovereign State would continue to exist despite its government being overthrown by military force. Crawford explains this distinction with regard to Iraq. He states,

> "The occupation of Iraq in 2003 illustrated the difference between 'government" and 'State'; when Members of the Security Council, after adopting SC res 1511, 16 October 2003, called for the rapid 'restoration of Iraq's sovereignty,' they did not imply that Iraq had ceased to exist as a State but that normal governmental arrangements should be restored."[112]

7.2. With regard to the recognition of external sovereignty, there are two aspects—recognition of sovereignty and the recognition of government. External sovereignty cannot be recognized with the initial recognition of the government representing the State, and once recognition of sovereignty is granted, Oppenheim asserts that it "is incapable of withdrawal"[113] by the recognizing States. Schwarzenberger also asserts, that "recognition estops [precludes] the State which has recognized the title from contesting its validity at any future time."[114] According to Wheaton:

> "The recognition of any State by other States, and its admission into the general society of nations, may depend…upon its internal constitution or form of government, or the choice it may make of its rulers. But whatever be its internal constitution, or form of government, or whoever be its ruler, or even if it be distracted with anarchy, through a violent contest for the government between different parties among the people, the State still subsists in contemplation of law, until its sovereignty is completely extinguished by the final dissolution of the social tie, or by some other cause which puts an end to the being of the State."[115]

Therefore, recognition of a sovereign State is a political act with legal consequences. [116] The recognition of governments, however, which could

---

[110] FRANK SARGENT HOFFMAN, THE SPHERE OF THE STATE OR THE PEOPLE AS A BODY-POLITIC 19 (1894).
[111] Quincy Wright, *The Status of Germany and the Peace Proclamation*, 46(2) AM. J. INT'L L. 299, 307 (Apr. 1952).
[112] *See* CRAWFORD, *supra* note 1, at 34, n. 157.
[113] LASSA OPPENHEIM, INTERNATIONAL LAW 137 (3rd ed. 1920).
[114] Georg Schwarzenberger, *Title to Territory: Response to a Challenge*, 51(2) AM. J. INT'L L. 308, 316 (1957).
[115] *See* WHEATON, *supra* note 64, at 32.
[116] GERHARD VON GLAHN, LAW AMONG NATIONS 85 (6th ed. 1992).

change form through constitutional or revolutionary means subsequent to the recognition of State sovereignty, is a purely political act and can be retracted by another government for strictly political reasons. Cuba is a clear example of this principle, where the United States withdrew the recognition of Cuba's government under President Fidel Castro, but at the same time this political act did not mean Cuba ceased to exist as a sovereign State. In other words, sovereignty of an independent State, once established, is not dependent upon the political will of other governments, but rather the objective rules of international law and successorship.

8. *THE FORMATION OF THE ACTING GOVERNMENT OF THE HAWAIIAN KINGDOM*

8.1. On December 10, 1995, a general partnership was formed in compliance with an *Act to Provide for the Registration of Co-partnership Firms*, 1880.[117] The partnership was named the Perfect Title Company, hereinafter PTC, and functioned as a land title abstracting company.[118] Since the enactment of the 1880 Co-partnership Act, members of co-partnership firms within the Kingdom registered their articles of agreements in the Bureau of Conveyances, being a part of the Interior department of the Hawaiian Kingdom. This same Bureau of Conveyances continues to exist and is presently administered by the United States, by its political subdivision, the State of Hawai'i. The law requires a notary public to acknowledge all documents before being registered with the Bureau,[119] but there have been no lawful notaries public in the Islands since 1893. All State of Hawai'i notaries public are commissioned under and by virtue of United States law. Therefore, in order for the partners of PTC to get their articles of agreement registered in the Bureau of Conveyances in compliance with the 1880 co-partnership statute, the following protest was incorporated and made a part of PTC's articles of agreement, which stated:

> "Each partner also agrees that the business is to be operated in strict compliance to the business laws of the Hawaiian Kingdom as noted in the "Compiled Laws of 1884" and the "session laws of 1884 and 1886." Both partners are native Hawaiian subjects by birth and therefore are bound and subject to the laws above mentioned. And it is further agreed by both partners that due to the filing requirements of the Bureau of Conveyances to go before a foreign notary public within the Hawaiian Kingdom, they do this involuntarily and against their will."[120]

8.2. PTC commenced on December 10, 1995, but there was no *military* government to ensure PTC's compliance with the co-partnership statute from that date. The registration of co-partnerships creates a contract between co-

[117] The partnership act can be accessed online at: http://hawaiiankingdom.org/pdf/Annex%2025.pdf.
[118] PTC partnership agreement can be accessed online at: http://hawaiiankingdom.org/pdf/Annex%2026.pdf.
[119] Hawai'i Revised Statutes, §502-41.
[120] Co-partnership Agreement establishing Perfect Title Company, December 10,1995, document no. 95-153346, Hawai'i Bureau of Conveyances.

partnerships on the one hand, and the Minister of the Interior, representing the *de jure* government, on the other. It is obligatory for co-partnerships to register their articles of agreement with the Minister of the Interior, and for the Minister of the Interior, it is his duty to ensure that co-partnerships maintain their compliance with the statute. This is a contractual relationship, whereby:

> "there must be a promise binding the person[s] subject to the obligation; and in order to give a binding force to the promise the obligation must come within the sphere of Agreement. There must be an acceptance of the promise by the person to whom it is made, so that by their mutual consent the one is bound to the other. A Contract then springs from the offer of a promise and its acceptance."[121]

The registration of co-partnerships is the offer of the promise by its members to abide by the obligation imposed by the statute, and the acceptance of this offer by the Interior department creates a contractual relationship whereby "one is bound to the other." Section 7 of the 1880 Co-partnership Act clearly outlines the obligation imposed upon the members of co-partnerships in the Kingdom, which states:

> The members of every co-partnership who shall neglect or fail to comply with the provisions of this law, shall severally and individually be liable for all the debts and liabilities of such co-partnership and may be severally sued therefore, without the necessity of joining the other members of the co-partnership in any action or suit, and shall also be severally liable upon conviction, to a penalty not exceeding five dollars for each and every day while such default shall continue; which penalties may be recovered in any Police or District Court.[122]

The partners of PTC desired to establish a legitimate co-partnership pursuant to Hawaiian Kingdom law and in order for the title company to exist as a legal co-partnership firm, the *de jure* government had to be reestablished in an *acting* capacity in order to serve as a necessary party to the contractual relationship created under and by virtue of the statute. An acting official is "not an appointed incumbent, but merely a *locum tenens*, who is performing the duties of an office to which he himself does not claim title."[123] It is an official that temporarily assumes the duties and authority of government.

8.3. The last legitimate Hawaiian Legislative Assembly of 1886 was prevented from reconvening as a result of the 1887 rebellion. The subsequent Legislative Assembly of 1887 was based on an illegal constitution, which altered existing voting rights, and led to the illegal election of the 1887 Legislature. As a result,

---

[121] WILLIAM R. ANSON, PRINCIPLES OF THE LAW OF CONTRACT 11 (1880).
[122] HAWAIIAN KINGDOM, COMPILED LAWS (CIVIL CODE) 649 (1884). The Compiled Laws can be accessed online at: http://hawaiiankingdom.org/civilcode/index.shtml.
[123] See BLACK'S LAW, *supra* note 107, at 26.

there existed no legitimate Nobles in the Legislative Assembly when Queen Lili'uokalani ascended to the Office of Monarch in 1891, and therefore, the Queen was unable to obtain confirmation for her named successors from those Nobles of the 1886 Legislative Assembly as required by the 1864 Constitution. Tragically, when the Queen died on November 11, 1917, there were no lawful successors to the Throne. In the absence of a confirmed successor to the Throne by the Nobles of the Legislative Assembly, Article 33 of the Constitution of 1864 provides:

> "should a Sovereign decease…and having made no last Will and Testament, the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent or Council of Regency, who shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King."

Hawaiian law did not assume that the whole of the Hawaiian government would be made vacant, and, consequently, the law did not formalize provisions for the reactivation of the government in extraordinary circumstances. Therefore, a deliberate course of action was taken to re-activate the Hawaiian government by and through its executive branch as officers *de facto*. In view of such an extreme emergency, Oppenheimer states that, "a temporary deviation from the wording of the constitution is justifiable if this is necessary to conserve the sovereignty and independence of the country."[124]

When properly interpreted, the 1864 Constitution provides that the Cabinet Council shall be a Council of Regency until a proper Legislative Assembly can be convened to "elect by ballot some native Ali'i [Chief] of the Kingdom as Successor to the Throne." It further provides that the Regent or Council of Regency "shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King."[125] The Constitution also provides that the Cabinet Council "shall consist of the Minister of Foreign Affairs, the Minister of the Interior, the Minister of

---

[124] F.E. Oppenheimer, "Governments and Authorities in Exile," 36 AM. J. INT'L L. 581 (1942).

[125] Hawaiian constitution, art. 33, provides: It shall be lawful for the King at any time when he may be about to absent himself from the Kingdom, to appoint a Regent or Council of Regency, who shall administer the Government in His name; and likewise the King may, by His last Will and Testament, appoint a Regent or Council of Regency to administer the Government during the minority of any Heir to the Throne: and should a Sovereign decease, leaving a Minor Heir, and having made no last Will and Testament, the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent or Council of Regency, who shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King, until he shall have attained the age of eighteen years, which age is declared to be the Legal Majority of such Sovereign."

Finance, and the Attorney General of the Kingdom, and these shall be His Majesty's Special Advisers in the Executive affairs of the Kingdom." Interpretation of these constitutional provisions allows for the Minister of Interior to assume the powers vested in the Cabinet Council in the absence of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General, and consequently serve as Regent. This is a similar scenario that took place in 1940 when German forces invaded Belgium and captured King Leopold. As a result, the Belgian cabinet became a government in exile and, as a council of Regency, assumed all powers constitutionally vested in the King. Oppenheimer explains:

> As far as Belgium is concerned, the capture of the king did not create any serious constitutional problems. According to Article 82 of the Constitution of February 7, 1821, as amended, the cabinet of ministers have to assume supreme executive power if the King is unable to govern. True, the ministers are bound to convene the House of Representatives and the Senate and to leave it to the decision of the united legislative chambers to provide for a regency; but in view of the belligerent occupation it is impossible for the two houses to function. While this emergency obtains, the powers of the King are vested in the Belgian Prime Minister and the other members of the cabinet.[126]

8.4. The 1880 Co-partnership Act requires members of co-partnerships to register their articles of agreement in the Bureau of Conveyances, which is within the Interior department.[127] The Minister of the Interior holds a seat of government as a member of the Cabinet Council, together with the other Ministers. Article 43 of the Constitution provides that, "Each member of the King's Cabinet shall keep an office at the seat of Government, and shall be accountable for the conduct of his deputies and clerks." Necessity dictated that in the absence of any "deputies or clerks" of the Interior department, the partners of a registered co-partnership could assume the duty of the same because of the current state of affairs. Therefore, it was reasonable that partners of a registered co-partnership could assume the powers vested in the Registrar of the Bureau of Conveyances in the absence of the same; then assume the powers vested in the Minister of Interior in the absence of the same; then assume the powers constitutionally vested in the Cabinet Council in the absence of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General; and, finally assume the power constitutionally vested in the Cabinet as a Regency. A regency is defined as "the man or body of men intrusted with the vicarious government of a kingdom during the minority, absence, insanity, or other disability of the [monarch]."[128]

---

[126] *Id*., at 569.
[127] *See* COMPILED LAWS, *supra* note 122, at §1249.
[128] See BLACK'S LAW, *supra* note 107, at 1282.

8.5. With the specific intent of assuming the "seat of Government," the partners of PTC formed a second partnership called the Hawaiian Kingdom Trust Company, hereinafter HKTC, on December 15, 1995.[129] The partners intended that this registered partnership would serve as a provisional surrogate for the Council of Regency. Therefore, and in light of the ascension process explained above, HKTC could then serve as officers *de facto* for the Registrar of the Bureau of Conveyances, the Minister of Interior, the Cabinet Council, and ultimately as the Council of Regency. Article 1 of HKTC 's deed of general partnership provided:

> "The above mentioned parties have agreed to form a general partnership under the firm name of Hawaiian Kingdom Trust Company in the business of administering, investigating, determining and the issuing of land titles, whether in fee, or for life, or for years, in such manner as Hawaiian law prescribes… The company will serve in the capacity of *acting* for and on behalf of the Hawaiian Kingdom government. The company has adopted the Hawaiian Constitution of 1864 and the laws lawfully established in the administration of the same. The company is to commence on the 15th day of December, A.D. 1995, and shall remain in existence until the absentee government is re-established and fully operational, upon which all records and monies of the same will be transferred and conveyed over to the office of the Minister of Interior, to have and to hold under the authority and jurisdiction of the Hawaiian Kingdom."

Thirty-eight deeds of trusts conveyed by Hawaiian subjects to HKTC acknowledged the trust as a company "acting for and on behalf of the Hawaiian Kingdom government" and outlined the role of the trust company and its fiduciary duty it had to its beneficiaries.[130] HKTC was not only competent to serve as the *acting* Cabinet Council, but also possessed a fiduciary duty toward its beneficiaries to serve in that capacity until the government is re-established *de jure* in accordance with the terms of the 1893 *Restoration agreement*. According to Pomeroy:

> "Active or special trusts are those in which, either from the express direction of the language creating the trust, or from the very nature of the trust itself, the trustees are charged with the performance of active and substantial duties with respect to the control, management, and disposition of the trust property for the benefit of the *cestui que*

[129] HKTC partnership agreement can be accessed online at: http://hawaiiankingdom.org/pdf/Annex%2027.pdf.

[130] See Deeds of Trust to the Hawaiian Kingdom Trust Company, a general partnership, Doc. no.'s 96-004246, 96-006277, 96-014116, 96-026387, 96-026388, 96-028714, 96-024845, 96-032930, 96-044551, 96-044550, 96-047382, 96-047380, 96-047379, 96-047381, 96-056981, 96-052727, 96-060519, 96-032728, 96-057667, 96-057668, 96-060520, 96-061209, 96-061207, 96-056980, 96-052729, 96-063384, 96-063385, 96-063382, 96-057664, 96-019923, 96-046712, 96-063386, 96-063382, 96-063383, 96-066996, 96-061208 and 96-046711, State of Hawai'i Bureau of Conveyances. One the deeds of trust (document no. 96-014116) can be accessed online at: http://hawaiiankingdom.org/pdf/Annex%2028.pdf.

> *trustent* [beneficiary of a trust]. They may, except when restricted by statute, be created for every purpose not unlawful, and, as a general rule, may extend to every kind of property, real and personal."[131]

The purpose of HKTC was two fold; first, to ensure PTC complies with the co-partnership statute, and, second, provisionally serve as the government of the Hawaiian Kingdom. What became apparent was the seeming impression of a conflict of interest, whereby the duty to comply and the duty to ensure compliance was vested in the same two partners of the two companies. Therefore, in order to avoid this apparent conflict of interest, the partners of both PTC and HKTC, reasoned that an *acting* Regent, having no interests in either company, should be appointed to serve as representative of the Hawaiian government. Since HKTC assumed to represent the interests of the Hawaiian government in an acting capacity, the trustees would therefore make the appointment. The trustees looked to Article XXXI, Chapter XI, Title 3 of the Hawaiian Civil Code, whereby the *acting* Regency would be constitutionally authorized to direct the executive branch of the government in the formation and execution of the reconvening of the Legislative Assembly, so that the government could procedurally move from provisional to *de jure*.[132]

8.6. It was agreed that David Keanu Sai, now the present Ambassador-at-large of the *acting* government and author of this Brief, would be appointed to serve as *acting* Regent, but could not retain an interest in the two companies prior to the appointment. In that meeting, it was agreed upon and decided that Ms. Nai'a-Ulumaimalu would replace the author as trustee of HKTC and partner of PTC. The plan was to maintain the standing of the two partnerships under the co-partnership statute, and not have them lapse into sole-proprietorships. To accomplish this, the author would relinquish his entire fifty percent (50%) interest by deed of conveyance in both companies to Lewis;[133] after which Lewis would convey a redistribution of interest to Ms. Nai'a-Ulumaimalu,[134] whereby the former would hold a ninety-nine percent (99%) interest in the two companies and the latter a one percent (1%) interest in the same. In order to have these two transactions take place simultaneously without affecting the standing of the two partnerships, both deeds of conveyance would happen on the same day but won't take effect until the following day, February 28, 1996. These conveyances were registered in the Bureau of Conveyances in conformity with the 1880 Co-partnership Act. With the transactions completed, the Trustees then appointed the author as *acting* Regent on March 1, 1996, and thereafter filed a notice of this appointment with the Bureau of

---

[131] JOHN NORTON POMEROY, A TREATISE ON EQUITY JURISPRUDENCE AS ADMINISTERED IN THE UNITED STATES OF AMERICA, 553 (1907).
[132] *See* COMPILED LAWS, *supra* note 122, 214-234.
[133] The Sai to Lewis deed can be accessed online at: http://hawaiiankingdom.org/pdf/Annex%2030.pdf.
[134] The Lewis to Nai'a-Ulumaimalu deed can be accessed online at: http://hawaiiankingdom.org/pdf/Annex%2031.pdf.

Conveyances.[135] Thereafter, HKTC resumed its role as a general partnership within the meaning of the 1880 Co-partnership Act, and no longer served as "a company *acting* for and on behalf of the Hawaiian Kingdom government" and prepared for the dissolution of the company. On May 15, 1996, the Trustees conveyed by deed all of its right, title and interest acquired by thirty-eight deeds of trust to the *acting* Regent, and stipulated that the company would be dissolved in accordance with the provisions of its deed of general partnership on June 30, 1996.[136]

8.7. The transfer and subsequent dissolution, was made in accordance with section 3 of the 1880 Co-partnership Act, which provides that "whenever any change shall take place in the constitution of any such firm…a statement of such change or dissolution shall also be filed in the said office of the Minister of the Interior, within one month from such…dissolution."[137] On February 28, 1997, a Proclamation by the *acting* Regent announcing the restoration of the Hawaiian government was printed in the March 9, 1997 issue of the Honolulu Sunday Advertiser newspaper. The proclamation stated, in part, that the:

> "Hawaiian Monarchical system of Government is hereby re-established, [and the] Civil Code of the Hawaiian Islands as noted in the Compiled Laws of 1884, together with the session laws of 1884 and 1886 and the Hawaiian Penal Code are in full force. All Hawaiian Laws and Constitutional principles not consistent herewith are void and without effect."[138]

Since the appointment of the *acting* Regent, there have been twenty-six commissions that filled vacancies of the executive and judicial departments. These governmental positions, as statutorily provided, comprise officers *de facto* of the Hawaiian government while under American occupation. Governmental positions that are necessary for the reconvening of the Legislative Assembly in accordance with Title III of the Civil Code would be filled by commissioned officers *de facto*.[139]

---

[135] HKTC's notice of appointment can be accessed online at: http://hawaiiankingdom.org/pdf/Annex%2032.pdf.

[136] HKTC's deed to acting Regent can be accessed online at: http://hawaiiankingdom.org/pdf/Annex%2033.pdf.

[137] *See* Partnership Act, *supra* note 117.

[138] Proclamation of *Acting* Regent declaring the Hawaiian Monarchical form of Government is re-established, February 28, 1997, published in the March 9, 1997 issue of the Honolulu Sunday Advertiser. Also recorded in its entirety in the Bureau of Conveyances as document no. 97-027541.

[139] In September 1999, the *acting* Regent commissioned Peter Umialiloa Sai as *acting* Minister of Foreign Affairs, Kau'i P. Sai-Dudoit, formerly known as Kau'i P. Goodhue, as *acting* Minister of Finance, and Gary V. Dubin, Esquire, as *acting* Attorney General. At a meeting of the Cabinet Council on 10 September 1999, it was determined by resolution "that the office of the Minister of Interior shall be resumed by David Keanu Sai, thereby absolving the office of the Regent, *pro tempore*, and the same to be replaced by the Cabinet Council as a Council of Regency, *pro tempore*, within the meaning of Article 33 of the Constitution of the Country." The Agent serves as Prime Minister and chairman of the *acting* Council of Regency.

8.8. The Hawaiian government did not foresee the possibility of its territory subjected to an illegal and prolonged occupation, where indoctrination and the manipulation of its political history affected the psyche of its national population. Therefore, it did not provide a process for reinstating the government, being the organ of the State, either in exile or within its own territory. But at the same time, it did not place any constitutional or statutory limitations upon the restoration of its government that could serve as a bar to its reinstatement—save for the legal parameters of *necessity*. The legal basis for the reassertion of Hawaiian governance, by and through a Hawaiian general partnership statute, is clearly extraordinary, but the exigencies of the time demanded it. In the absence of any Hawaiian subjects adhering to the statutory laws of the country as provided for by the country's constitutional limitations, the abovementioned process was established for the establishment of an *acting* Regency, pending the reconvening of the Legislative Assembly to elect by ballot a Regent or Regency *de jure* as provided for under Article 22 of the Constitution. Wolff states, "in so far as conditions provided for in the constitutional law cannot be complied with owing to the occupation of the country by the enemy, a dispossessed government can act without being compelled to fulfill those conditions." [140] Also commenting on exiled governments, Marek explains that, "while the requirement of internal legality must in principle be fulfilled for an exiled government to possess the character of a State organ, minor flaws in such legality are easily cured by the overriding principle of its actual uninterrupted continuity."[141] Oppenheimer also explains "such government is the only *de jure* sovereign power of the country the territory of which is under belligerent occupation."[142] It follows, *a fortiori*, that when an "occupant fails to share power with the lawful government under the auspices of international law, the latter is not precluded from taking whatever countermeasures it can in order to protect its interests during and after the occupation."[143] Bateman states the "duty correlative of the right of political existence, is obviously that of political self-preservation; a duty the performance of which consists in constant efforts to preserve the principles of the political constitution." [144] Political self-preservation is adherence to the legal order of the State, whereas national self-preservation is where the principles of the constitution are no longer acknowledged, *i.e.* revolution.[145]

8.9. The establishment of an *acting* Regent—an officer *de facto*, would be a political act of self-preservation, not revolution, and be grounded upon the legal doctrine of "limited necessity." According to de Smith, deviations from

[140] Ernst Wolff, *The International Position of Dispossessed Governments at Present in England*, 6 MOD. L. REV. 215 (1942-1943).
[141] *See* MAREK, *supra* note 3, at 98.
[142] *See* Oppenheimer, *supra* note 124, at 568.
[143] EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION 212 (1993).
[144] William O. Bateman, *Political and Constitutional Law of the United States of America* (G.I. Jones and Company, 1876), 22.
[145] *Id*.

a State's constitutional order "can be justified on grounds of necessity."[146] He continues to explain, "State necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution."[147] Lord Pearce also states that there are certain limitations to the principle of necessity, "namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful…Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign."[148] Judge Gates took up the matter of the legal doctrine of necessity in *Chandrika Persaud v. Republic of Fiji*, and drew from the decision in the *Mitchell case*,[149] which provided that the requisite conditions for the principle of necessity consists of:

> 1. An imperative necessity must arise because of the existence of exceptional circumstances not provided for in the Constitution, for immediate action to be taken to protect or preserve some vital function of the State;
> 2. There must be no other course of action reasonably available;
> 3. Any such action must be reasonably necessary in the interest of peace, order, and good government; but it must not do more than is necessary or legislate beyond that;
> 4. It must not impair the just rights of citizens under the Constitution; and,
> 5. It must not be one the sole effect and intention of which is to consolidate or strengthen the revolution as such.

Brookfield summarized the principle of necessity as the "power of a Head of State under a written Constitution extends by implication to executive acts, and also legislative acts taken temporarily (that is, until confirmed, varied or disallowed by the lawful Legislature) to preserve or restore the Constitution, even though the Constitution itself contains no express warrant for them."[150] Brookfield also explains "such powers are not dependent on the words of a particular Constitution, except in so far as that Constitution designates the authority in whom the implied powers would be found to reside."[151]

8.10. The assumption by private citizens up the chain of constitutional authority in government to the office of Regent, as enumerated under Article 33 of the Constitution, is a *de facto* process born out of necessity. Judge Cooley defines an officer *de facto* "to be one who has the reputation of being the officer he

[146] STANLEY A. DE SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW, 80 (1986).
[147] *Id*.
[148] *Madzimbamuto v. Lardner-Burke*, 1 A.C. 645, 732 (1969).
[149] *Mitchell v. Director of Public Prosecutions*, L.R.C. (Const.) 35, 88–89 (1986).
[150] F.M. Brookefield, The Fiji Revolutions of 1987, NEW ZEALAND L. J. 250, 251 (July 1988).
[151] *Id*.

assumes to be, and yet is not a good officer in point of law," but rather "comes in by claim and color of right."[152] According to Chief Justice Steere, the "doctrine of a *de facto* officer is said to have originated as a rule of public necessity to prevent public mischief and protect the rights of innocent third parties who may be interested in the acts of an assumed officer apparently clothed with authority and the courts have sometimes gone far with delicate reasoning to sustain the rule where threatened rights of third parties were concerned." [153] "Officers *de facto*" are distinguished from a "*de facto* government." The former is born out of a *de jure* government under and by virtue of the principle of necessity, while the latter is born out of revolution.

8.11. As a result of the continuity of the Hawaiian State under the terms of international law, it would normally be supposed that a government established in accordance with its constitution and laws would be competent to represent it internationally. Marek emphasizes that:

> "it is always the legal order of the State which constitutes the legal basis for the existence of its government, whether such government continues to function in its own country or goes into exile; but never the delegation of the territorial State nor any rule of international law other than the one safeguarding the continuity of an occupied State. The relation between the legal order of the territorial State and that of the occupied State…is not one of delegation, but of co-existence."[154]

The actual exercise of that competence, however, will depend upon other States agreeing to enter into diplomatic relations with such a government. This was, in the past at least, conditioned upon recognition, but many states in recent years have moved away from the practice of recognizing governments, preferring any such recognition to be inferred from their acts. The normal conditions for recognition are that the government concerned should be either legitimately constituted under the laws of the State concerned, or that it should be in effective control of the territory. Ideally, it should possess both attributes. Ineffective, but, lawful, governments normally only maintain their status as recognized entities during military occupation, or while there remains the possibility of their returning to power.

8.12. While Hawai'i was not at war with the United States, but rather a neutral State since the Spanish-American War, the international laws of occupation would still apply. With specific regard to occupying neutral territory, the Arbitral Tribunal, in its 1927 case, *Coenca Brothers vs. Germany*, concluded that "the occupation of Salonika by the armed forces of the Allies constitutes a

[152] THOMAS M. COOLEY, A TREATISE ON THE LAW OF TAXATION, 185 (1876).
[153] *Carpenter v. Clark*, 217 Michigan 63, 71 (1921).
[154] *See* MAREK, *supra* note 3, at 91.

violation of the neutrality of that country."[155] Later, in the 1931 case, *In the matter of the Claim Madame Chevreau against the United Kingdom*, the Arbitrator concluded that the status of the British forces while occupying Persia (Iran)—a neutral State in the First World War—was analogous to "belligerent forces occupying enemy territory."[156] Oppenheim observes that an occupant State on neutral territory "does not possess such a wide range of rights with regard to the occupied country and its inhabitants as he possesses in occupied enemy territory."[157] Article 2 of the Fourth Geneva Convention (1949) states:

> "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

8.13. On the face of the Hague Regulations it appears to apply only to territory belonging to an enemy, but Feilchenfeld states, "it is nevertheless, usually held that the rules of belligerent occupation will also apply where a belligerent, in the course of the war, occupied neutral territory, even if the neutral power should have failed to protest against the occupation."[158] The law of occupation is not only applied with equal force and effect, but the occupier is also greatly shorn of its belligerent rights in Hawaiian territory as a result of the Islands' neutrality. Therefore, the United States cannot impose its own domestic laws without violating international law. This principle is clearly laid out in Article 43 of the Hague Regulations, which states, "the authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and civil life, while respecting, unless absolutely prevented, the laws in force in the country." Referring to the American occupation of Hawai'i, Dumberry states:

> "…the 1907 Hague Convention protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV

[155] *Coenca Brothers v. Germany*, Greco-German Mixed Arbitral Tribunal, Case No. 389 (1927), reprinted in ANN. DIG. PUB. INT'L. L. CASES, YEARS 1927 AND 1928 570, 571 (1931).
[156] *In the Matter of the Claim Madame Chevreau Against the United Kingdom*, 27 AM. J. INT'L. L. 153, 160 (1933).
[157] LASSA OPPENHEIM, INTERNATIONAL LAW 241 (7th ed. 1948-52).
[158] ERNST FEILCHENFELD, THE INTERNATIONAL ECONOMIC LAW OF BELLIGERENT OCCUPATION 8 (1942).

> provides for the co-existence of two distinct legal orders, that of the occupier and the occupied."[159]

8.14. According to Glahn, there are three distinct systems of law that exist in an occupied territory: "the indigenous law of the legitimate sovereign, to the extent that it has not been necessary to suspend it; the laws (legislation, orders, decrees, proclamations, and regulations) of the occupant, which are gradually introduced; and the applicable rules of customary and conventional international law."[160] Hawai'i's sovereignty is maintained and protected as a subject of international law, in spite of the absence of an effective government since 1893. In other words, the United States should have administered Hawaiian Kingdom law as defined by its constitution and statutory laws, similar to the U.S. military's administration of Iraqi law in Iraq with portions of the law suspended due to military necessity.[161] A United States Army regulation on the law of occupation recognizes not only the sovereignty of the occupied State, but also bars annexation of the territory during hostilities because of the continuity of the invaded State's sovereignty. In fact, United States Army regulations on the laws of occupation not only recognize the continued existence of the sovereignty of the occupied State, but,

> "…confers upon the invading force the means of exercising control for the period of occupation. It does not transfer sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force. It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress."[162]

8.15. It is abundantly clear that the United States occupied the Hawaiian Islands for the purpose of waging the war against Spain, as well as fortifying the Islands as a military outpost for the defense of the United States in future conflicts with the convenience of the puppet government it installed on January 17, 1893. According to the United States Supreme Court, "Though the [annexation] resolution was passed July 7, [1898] the formal transfer was not made until August 12, when, at noon of that day, the American flag was raised over the government house, and the islands ceded with appropriate ceremonies to a representative of the United States."[163] Patriotic societies and many of the Hawaiian citizenry boycotted the ceremony and "they protested

---

[159] Patrick Dumberry, *The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continue as an Independent State under International Law*, 2(1) CHINESE J. INT'L L. 655, 682 (2002).
[160] *See* VON GLAHN, *supra* note 116, at 774.
[161] David J. Scheffer, *Beyond Occupation Law*, 97(4) AM. J. INT'L. L. 842-860 (Oct. 2003).
[162] "The Law of Land Warfare," *U.S. Army Field Manual 27-10* §358 (July 1956).
[163] *Territory of Hawai'i v. Mankichi*, 190 U.S. 197, 212 (1903).

annexation occurring without the consent of the governed."[164] The "power exercising effective control within another's sovereign territory has only temporary managerial powers," and, during "that limited period, the occupant administers the territory on behalf of the sovereign."[165] The actions taken by the McKinley administration, with the consent of the Congress by joint resolution, clearly intended to mask the violation of international law as if the annexation took place by a voluntary treaty thereby giving the appearance of cession. As Marek states, "a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State."[166] Although the United States signed and ratified both the 1899 and the 1907 Hague Regulations, which post-date the occupation of the Hawaiian Islands, the "text of Article 43," according to Benvenisti, "was accepted by scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary international law."[167] Graber also states, that "nothing distinguishes the writing of the period following the 1899 Hague code from the writing prior to that code."[168] Consistent with this understanding of the international law of occupation during the Spanish-American War, Smith reported that the "military governments established in the territories occupied by the armies of the United States were instructed to apply, as far as possible, the local laws and to utilize, as far as seemed wise, the services of the local Spanish officials."[169] In light of this instruction to apply the local laws of the occupied State, the disguised annexation during the Spanish-American War, together with its ceremony on August 12, 1898 on the grounds of 'Iolani Palace, would appear to show clear intent to conceal an illegal occupation.

8.16. The case of the *acting* government is unique in several respects. While it claims to be regarded as the "legitimate" government of Hawai'i, its existence

---

[164] TOM COFFMAN, NATION WITHIN: THE HISTORY OF THE AMERICAN OCCUPATION OF HAWAI'I 322 (2nd ed. 2009). Coffman initially published this book in 1998 titled *Nation Within: The Story of the American Annexation of the Nation of Hawai'i*. In his second edition published in 2009 he explains the change. Coffman explains:

> "I am compelled to add the continued relevance of this book reflects a far-reaching political, moral and intellectual failure of the United States to recognize and deal with its takeover of Hawai'i. In the book's subtitle, the word *Annexation* has been replaced by the word *Occupation*, referring to America's occupation of Hawai'i. Where annexation connotes legality by mutual agreement, the act was not mutual and therefore not legal. Since by definition of international law there was no annexation, we are left then with the word *occupation*. In making this change, I have embraced the logical conclusion of my research into the events of 1893 to 1898 in Honolulu and Washington, D.C. I am prompted to take this step by a growing body of historical work by a new generation of Native Hawaiian scholars. Dr. Keanu Sai writes, 'The challenge for…the fields of political science, history, and law is to distinguish between the rule of law and the politics of power.' In the history of Hawai'i, the might of the United States does not make it right."

[165] *See* BENVENISTI, *supra* note 143, at 6.

[166] *See* MAREK, *supra* note 3, at 110.

[167] *See* BENVENISTI, *supra* note 143, at 8.

[168] DORIS GRABER, THE DEVELOPMENT OF THE LAW OF BELLIGERENT OCCUPATION: 1863-1914, 143 (1949).

[169] Munroe Smith, *Record of Political Events*, 13(4) POL. SCI. Q. 745, 748 (Dec. 1898).

is not only dependent upon the issue of State continuity, but also its existence is dependent upon exercising governmental control. Governmental control, however, is nearly non-existent within the Hawaiian Islands as a result of a prolonged and illegal occupation, but governmental control can be effectively exercised outside of the Hawaiian Islands. After all, the nature of belligerent occupation is such as to preserve the original competence of indigenous institutions in occupied territories. The *acting* government, as officers *de facto*, is an extension of the original *de jure* government of the Hawaiian Kingdom as it stood in 1893. Therefore, in such circumstances, recognition of the authority of the *acting* government could be achieved by other States through *de facto* recognition under the "doctrine of acquiescence," and not *de facto* recognition of a "new" government or State that comes about through a successful revolution. Recognition of a *de facto* government is political and acts of pure policy by States, because they attempt to change or alter the legal order of an already established and recognized personality—whereas, recognition of *de facto* officers does not affect the legal of order of a State that has been the subject of prolonged occupation. It is within these parameters that the *acting* government, as *de facto* officers by necessity, cannot claim to represent the people *de jure*, but only, at this time, represent the legal order of the Hawaiian State as a result of the limitations imposed upon it by the laws of occupation and the duality of two legal orders existing in one in the same territory—that of the occupier and the occupied.

8.17. The *acting* government has restored the executive and the judicial branches of government. Heading the executive branch of the *acting* government is the Council of Regency, which is comprised of the author of this Brief, as *acting* Minister of the Interior and Chairman of the Council, as well as *acting* Ambassador-at-large, His Excellency Peter Umialiloa Sai as *acting* Minister of Foreign Affairs and Vice-Chairman of the Council, Her Excellency Kauʻi P. Sai-Dudoit as *acting* Minister of Finance, and His Excellency Dexter Keʻeaumoku Kaʻiama, *Esq*., as *acting* Attorney General. Heading the Judicial branch of the *acting* government is the Supreme Court, which is comprised of Alvin K. Nishimura, *Esq*., as *acting* Chief Justice and Chancellor of the Kingdom, and Allen K. Hoe, *Esq*., as *acting* First Associate Justice.

9. *DE FACTO RECOGNITION OF THE ACTING GOVERNMENT*

9.1. Under international law, MacGibbon states the "function of acquiescence may be equated with that of consent," whereby "it constitutes a procedure for enabling the seal of legality to be set upon rules which were formerly in process of development and upon rights which were formerly in process of consolidation."[170] He explains the "primary purpose of acquiescence is evidential; but its value lies mainly in the fact that it serves as a form of recognition of legality and condonation of illegality and provides a criterion

[170] I.C. MacGibbon, *The Scope of Acquiescence in International Law*, 31 BRIT. Y. B. INT'L L. 143, 145 (1954).

which is both objective and practical."[171] According to Brownlie, "There is a tendency among writers to refer to any representation or conduct having legal significance as creating estoppel, precluding the author from denying the 'truth' of the representation, express or implied."[172] State practice has also acknowledged not only the function of acquiescence, but also the consequence of acquiescence. Lauterpacht explains:

> "The absence of protest, may, in addition, in itself become a source of legal right inasmuch as it is related to—or forms a constituent element of—estoppel or prescription. Like these two generally recognized legal principles, the far-reaching effect of the failure to protest is not a mere artificiality of the law. It is an essential requirement of stability—a requirement even more important in the international than in other spheres; it is a precept of fair dealing inasmuch as it prevents states from playing fast and loose with situations affecting others; and it is in accordance with equity inasmuch as it protects a state from the contingency of incurring responsibilities and expense, in reliance on the apparent acquiescence of others, and being subsequently confronted with a challenge on the part of those very states."[173]

In a memorandum by Walter Murray, the United States Chief of the Division of Near Eastern Affairs, regarding the attitude of the United States toward Italy's unilateral annexation of Ethiopia, Murray stated, "It may be argued, therefore, that our failure to protest the recent decree extending Italian jurisdiction over American nationals (and other foreigners in Ethiopia) or its application to American nationals would *not* constitute *de jure* recognition of the Italian annexation of Ethiopia. However, our failure to protest might be interpreted as a recognition of the *de facto* conditions in Ethiopia."[174] In other words, the United States' failure to protest provided *tacit* acquiescence, and, therefore, *de facto* recognition of the conditions in Ethiopia.

9.2. Between 1999 and 2001, the *acting* government represented the Hawaiian Kingdom in arbitral proceedings before the Permanent Court of Arbitration.[175] "In *Larsen v. the Hawaiian Kingdom*, Lance Paul Larsen, a resident of the state of Hawaii, sought redress from the Hawaiian Kingdom for its failure to protect him from the United States and the State of Hawai'i."[176] The Arbitral Tribunal comprised of Professor James Crawford, SC, Presiding Arbitrator,

---

[171] *Id*.
[172] *See* BROWNLIE, *supra* note 53, at 640.
[173] H. Lauterpacht, *Sovereignty Over Submarine Areas*, 27 BRIT. Y. B. INT'L L. 376, 395 (1950).
[174] United States Department of State, *Foreign Relations of the United States*, vol. III, 241 (1936).
[175] *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566 (2001); see also the website of the Permanent Court of Arbitration at: http://www.pca-cpa.org/showpage.asp?pag_id=1159.
[176] Bederman & Hilbert, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawai'i*, 95 AM. J. INT'L L. 927 (2001); see also David Keanu Sai, *American Occupation of the Hawaiian State: A Century Unchecked*, 1 HAW. J. L. & POL. 46 (Summer 2004); and Dumberry, *supra* note 159.

who at the time of the proceedings was a member of the United Nations International Law Commission and *Special Rapporteur* on State Responsibility (1997-2001); Professor Christopher Greenwood, QC, Associate Arbitrator, who now serves as a Judge on the International Court of Justice since February 6, 2009; and Gavan Griffith, QC, Associate Arbitrator, who served as former Solicitor General for Australia. Early in the proceedings, the *acting* government, by telephone conversation with Secretary-General van den Hout of the Permanent Court of Arbitration, was requested to provide a formal invitation to the United States to join in the arbitration. Here follows the letter documenting the formal invitation done in Washington, D.C., on March 3, 2000, and later filed with the registry of the Permanent Court of Arbitration.[177]

> Mr. John Crook
> Assistant Legal Adviser for United Nations Affairs
> Office of the Legal Adviser
> United States Department of State
> 2201 C Street,
> N.W.Room 3422 NS
> Washington, D.C. 20520
>
> Re: Letter confirming telephone conversation of March 3, 2000 relating to arbitral proceedings at the Permanent Court of Arbitration, Lance Paul Larsen vs. The Hawaiian Kingdom
>
> Sir,
>
> This letter is to confirm our telephone conversation today at Washington, D.C. The day before our conversation Ms. Ninia Parks, esquire, Attorney for the Claimant, Mr. Lance Larsen, and myself, Agent for the Respondent, Hawaiian Kingdom, met with Sonia Lattimore, Office Assistant, L/EX, at 10:30 a.m. on the ground floor of the Department of State. I presented her with two (2) binders, the first comprised of an Arbitration Log Sheet, Lance Paul Larsen vs. The Hawaiian Kingdom, with accompanying documents on record before the Permanent Court of Arbitration at The Hague, Netherlands. The second binder comprised of divers documents of the Acting Council of Regency as well as diplomatic correspondence with treaty partners of the Hawaiian Kingdom.
>
> I stated to Ms. Lattimore that the purpose of our visit was to provide these documents to the Legal Department of the U.S. Department of State in order for the U.S. Government to be apprised of the arbitral proceedings already in train and that the Hawaiian Kingdom, by consent of the Claimant, extends an opportunity for the United States to join in the arbitration as a party. She assured me that the package will be given to Mr. Bob McKenna for review and assignment to

[177] *Acting* Government of the Hawaiian Kingdom, *Letter confirming telephone conversation with U.S. State Department relating to arbitral proceedings at the Permanent Court of Arbitration, March 3, 2000*, 1 HAW. J. L. & POL. 241 (Summer 2004).

someone within the Legal Department. I told her that we will be in Washington, D.C., until close of business on Friday, and she assured me that she will give me a call on my cellular phone at (808) 383-6100 by the close of business that day with a status report.

At 4:45 p.m., Ms. Lattimore contacted myself by phone and stated that the package had been sent to yourself as the Assistant Legal Adviser for United Nations Affairs. She stated that you will be contacting myself on Friday (March 3, 2000), but I could give you a call in the morning if I desired.

Today, at 11:00 a.m., I telephoned you and inquired about the receipt of the package. You had stated that you did not have ample time to critically review the package, but will get to it. I stated that the reason for our visit was the offer by the Respondent Hawaiian Kingdom, by consent of the Claimant, by his attorney, Ms. Ninia Parks, for the United States Government to join in the arbitral proceedings presently instituted under the auspices of the Permanent Court of Arbitration at The Hague, Netherlands. You stated that litigation in the court system is handled by the Justice Department and not the State Department, and that you felt they (Justice Dept.) would be very reluctant to join in the present arbitral proceedings.

I responded by assuring that the State Department should review the package in detail and can get back to the Acting Council of Regency by phone for continued dialogue. I gave you our office's phone number at (808) 239-5347, of which you acknowledged. I assured you that we did not need an immediate answer, but out of international courtesy the offer is still open, notwithstanding arbitral proceedings already in motion. I also advised you that Secretary-General van den Hout of the Permanent Court of Arbitration was aware of our travel to Washington, D.C. and the offer to join in the arbitration. As I stated in our conversation he requested that the dialogue be reduced to writing and filed with the International Bureau of the Permanent Court of Arbitration for the record, and you acknowledged. The conversation then came to a close.

I have taken the liberty of enclosing Hawaiian diplomatic protests lodged by my former countrymen and women in the U.S. Department of State in the summer of 1897, on record at your National Archives, in order for you to understand the gravity of the situation. I have also enclosed two (2) recent protests by myself as an officer of the Hawaiian Government against the State of Hawai'i for instituting unwarranted criminal proceedings against myself and other Hawaiian subjects and a resident of the Hawaiian Islands under the guise of American municipal laws within the territorial dominion of the Hawaiian Kingdom.

If after a thorough investigation into the facts presented to your office, and following zealous deliberations as to the considerations herein offered, the Government of the United States shall resolve to

> decline our offer to enter the arbitration as a Party, the present arbitral proceedings shall continue without affect pursuant to the Hague Conventions IV and V, 1907, and the UNCITRAL Rules of arbitration.
>
> With Sentiments of the Highest Regard,
> [signed] David Keanu Sai,
> Acting Minister of Interior and Agent for the Hawaiian Kingdom

9.3. This action would elicit one of two responses that would be crucial to not only the proceedings regarding the continuity of the Hawaiian State, but also to the status of the *acting* government. Firstly, if the United States had legal sovereignty over the Hawaiian Islands, it could demand that the Permanent Court of Arbitration terminate these proceedings citing the Court is intervening in the internal affairs of the United States without its consent.[178] This would have set in motion a separate hearing by the Permanent Court of Arbitration in order to decide upon the claim,[179] where the *acting* government would be able respond. Secondly, if the United States chose not to intervene, this non-action would indicate to the Court that it doesn't have a presumption of sovereignty or "interest of a legal nature" over the Hawaiian Islands, and, therefore, by its *tacit* acquiescence, would also acknowledge the *acting* government as legitimate in its claim to be the government of the Hawaiian Kingdom. In an article published in the *American Journal of International Law*, Bederman and Hilbert state:

> "At the center of the PCA proceeding was the argument that Hawaiians never directly relinquished to the United States their claim of inherent sovereignty either as a people or over their national lands, and accordingly that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States' 'unlawful imposition [over him] of [its] municipal laws' through its political subdivision, the State of Hawaii. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international

[178] *See* Article 62 of the Statute of the International Court of Justice, which provides: "1. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene. 2. It shall be for the Court to decide upon this request." The Permanent Court of Arbitration in the *Larsen case* relied upon decisions of the International Court of Justice to guide them concerning justiciability of third States, to wit, Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and the United States) (1953-1954), East Timor (Portugal v. Australia) (1991-1995), and Certain Phosphate Lands in Nauru (Nauru v. Australia). In the event that the United States chose to intervene to prevent the Larsen case from going further because it had an interest of a legal nature which may be affected by the decision," it is plausible that the Permanent Court of Arbitration would look to Article 62 of the Statute for guidance.
[179] *Id*.

law violations that the United States committed against him."[180]

9.4. The *acting* government was notified by the Permanent Court of Arbitration's Deputy Secretary General Phyllis Hamilton, that the United States notified the Court that they will not join the arbitral proceedings nor intervene, but had requested permission from the arbitral parties to have access to the pleadings and transcripts of the case. Both the *acting* government and the claimant, Lance Larsen, through counsel, consented. The United States was fully aware of the circumstances of the arbitration whereby the dispute was premised upon the continuity of the Hawaiian State, with the *acting* government serving as its organ during a prolonged and illegal occupation by the United States. The United States did not protest nor did it intervene, and therefore under the doctrine of acquiescence, whose primary function is evidential, the United States recognized *de facto* the conditions of the international arbitration and the continuity of the Hawaiian State. In other words, the United States has provided, not only by acquiescence with full knowledge *de facto* recognition of the *acting* government and the continuity of the Hawaiian State during an illegal and prolonged occupation, but also by direct acknowledgment of the *de facto* authority of the *acting* government when it requested permission from the *acting* government to access the arbitration records.

9.5. On December 12, 2000, the day after oral hearings were held at the Permanent Court of Arbitration, a meeting took place in Brussels between Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium, and the author, who was Agent, and two Deputy Agents, Peter Umialiloa Sai, *acting* Minister of Foreign Affairs, and Mrs. Kau'i P. Sai-Dudoit, formerly known as Kau'i P. Goodhue, *acting* Minister of Finance, representing the *acting* government in the *Larsen case*.[181] Ambassador Bihozagara attended a hearing before the International Court of Justice on December 8, 2000, (*Democratic Republic of the Congo v. Belgium*),[182] where he was made aware of the Hawaiian arbitration case that was also taking place across the hall in the Peace Palace. After inquiring into the case, he called for the meeting and wished to convey that his government was prepared to bring to the attention of the United Nations General Assembly the prolonged occupation of the Hawaiian Kingdom by the United States. In that meeting, the *acting* government decided it could not, in good conscience, accept the offer and place Rwanda in a position of reintroducing Hawaiian State continuity before the United Nations, when Hawai'i's community, itself, remained ignorant of Hawai'i's profound legal position as a result of institutionalized indoctrination. The *acting* government thanked Ambassador Bihozagara for his government's

[180] *See* Bederman & Hilbert, *supra* note 176, at 928.
[181] David Keanu Sai, *A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai'i today*, 10 J. L. & SOC. CHALLENGES 69, 130-131 (Fall 2008).
[182] *Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v. Belgium), Provisional Measures, Order of 8 December 2000, I.C.J. Rep. 2000, at 182.

offer, but the timing was premature. The *acting* government conveyed to the Ambassador that it would need to first focus its attention on continued exposure and education regarding the American occupation both in the Islands and abroad. Although the Rwandan government took no action before the United Nations General Assembly, the offer itself, exhibited Rwanda's *de facto* recognition of the *acting* government and the continuity of the Hawaiian State.

9.6. The *acting* government also filed a Complaint against the United States of America with the United Nations Security Council on July 5, 2001[183] and a Protest & Demand with United Nations General Assembly against 173 member States for violations of treaties with the Hawaiian Kingdom on August 12, 2012.[184] Both the Complaint and Protest & Demand were filed pursuant to Article 35(2) of the United Nations Charter, which provides that "A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter." The Complaint was accepted by China, who served as the Security Council's President for the month of July of 2001, and the Protest & Demand was accepted by Qatar, who served as the President of the General Assembly's 66th Session. Following the filing of the Protest & Demand, the *acting* government also submitted its instrument of accession to the Rome Statute with the United Nations Secretary General on December 10, 2012 in New York City,[185] and its instrument of accession to the 1949 Fourth Geneva Convention with the General Secretariat of the Swiss Federal Department of Foreign Affairs in Berne.[186] At no time has any of the 173 States, whose permanent missions received the protest & demand, objected to the *acting* government's claim of treaty violations by the principal States that have treaties with the Hawaiian Kingdom or their successor States that are successors to those treaties. Article 28 of the *Vienna Convention on Succession of States in respect of Treaties*, provides:

> "A bilateral treaty which at the date of a succession of States was in force or was being provisionally applied in respect of the territory to which the succession of States relates is considered as applying provisionally between the newly independent State and the other State concerned when: … (b) by reason of their conduct they are to be considered as having so agreed."

---

[183] The complaint and exhibits can be accessed online at: http://hawaiiankingdom.org/united-nations.shtml; *see* also Dumberry, *supra* note 159, at 671-672.
[184] The protest and demand can be accessed online at: http://hawaiiankingdom.org/pdf/UN_Protest.pdf.
[185] The ICC's instrument of accession can be accessed online at: http://hawaiiankingdom.org/pdf/Inst_Accession.pdf.
[186] The Fourth Geneva Convention's instrument of accession can be accessed online at: http://hawaiiankingdom.org/pdf/GC_Accession.pdf.

All 173 States have been made fully aware of the conditions of the Hawaiian Kingdom and by their silence have agreed, by acquiescence, like the United States, to the continuity of the Hawaiian State, the existence of the treaties with the principal States and their successor States, together with their corresponding duties and obligations, and the *de facto* authority of the *acting* government under those treaties.

9.7. The *acting* government, through time, established special prescriptive rights, by virtue of acquiescence and fully informed acknowledgment through action, as against the United States, and later as against other States, with regard to its exercising of governmental control in international affairs as officers *de facto* of the *de jure* government of the Hawaiian Kingdom as it stood in 1893. Furthermore, the *acting* government has based its actions as officers *de facto* on its interpretation of their treaties, to include the 1893 executive agreements—*Lili'uokalani assignment* and the *Agreement of restoration,* and the corresponding obligations and duties that stem from these treaties and agreements. The United States, as a party to the executive agreements and other treaties with the Hawaiian Kingdom, has not protested against acts taken by the *acting* government on these matters before the Permanent Court of Arbitration, and the United Nations' Security Council and General Assembly, and, therefore, has acquiesced with full knowledge as to the rights and duties of both the Hawaiian Kingdom and the United States under the agreements, which are treaties.

> "Evidence of the subsequent actions of the parties to a treaty may be admissible in order to clarify the meaning of vague or ambiguous terms. Similarly, evidence of the inaction of a party, although not conclusive, may be of considerable probative value. It has been said that '[the] primary value of acquiescence is its value as a means of interpretation.' The failure of one party to a treaty to protest against acts of the other party in which a particular interpretation of the terms of the treaty is clearly asserted affords cogent evidence of the understanding of the parties of their respective rights and obligations under the treaty."[187]

According to Fitzmaurice, special rights, may be built up by a State "leading to the emergence of a usage or customary…right in favour of such State," and "that the element of consent, that is to say, acquiescence with full knowledge, on the part of other States is not only present, but necessary to the formation of the right."[188] A State's special right derives from customary rights and obligations under international law, and MacGibbon explains that as "with all types of customary rules, the process of formation is similar, namely, the assertion of a right, on the one hand, and consent to or acquiescence in that

[187] See MacGibbon, supra note 170, at 146.
[188] Sir Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice, 1951-54: General Principles and Sources of Law*, 30 BRIT. Y. B. INT'L L. 68 (1953).

assertion, on the other."[189] Specifically, the absence of protest on the part of the United States against the *acting* government's claims as the legitimate government of the Hawaiian Kingdom signified the United States' acceptance of the validity of such claims, and cannot now deny it. In the *Alaskan Boundary Dispute*, Counsel for the United States, Mr. Taylor, distinguished between "prescription" and "acquiescence." He argued that the writings of Publicists, which is a source of international law, have "built up alongside of prescription a new doctrine which they called acquiescence, and the great cardinal characteristic of acquiescence is that it does not require any particular length of time to perfect it; it depends in each particular case upon all the circumstances of the case."[190] Lauterpracht concludes, "The absence of protest may, in addition, in itself become a source of legal right inasmuch as it is related to—or forms a constituent element of—estoppel."[191] Every action taken by the *acting* government under international law has directly challenged the United States claim to sovereignty over the Hawaiian Islands on substantive grounds and it has prevailed. It has, therefore, established a specific legal right, as against the United States, of its claim to be the legitimate government of the Hawaiian Kingdom exercising governmental control outside of the Hawaiian Islands while under an illegal and prolonged occupation. The United States and other States, therefore, are estopped from denying this specific legal right of the *acting* government by its own admission and acceptance of the right.

10. *TRANSITIONAL PLAN OF THE ACTING GOVERNMENT*

10.1. A viable and practical legal strategy to impel compliance must be based on the legal personality of the Hawaiian State first, and from this premise expose the effect that this status has on the national and global economies—*e.g.* illegally assessed taxes, duties, contracts, licensing, real estate transactions, etc. This exposure will no doubt force States to intercede on behalf of their citizenry, but it will also force States to abide by the doctrine of non-recognition qualified by the *Namibia* case and codified in the *Articles of State Responsibility for International Wrongful Acts*. Parties who entered into contracts within the territorial jurisdiction of the Hawaiian Kingdom, cannot rely on United States Courts in the Islands to provide a remedy for breach of simple or sealed contracts, because the courts themselves cannot exercise jurisdiction without a lawful transfer of Hawaiian sovereignty. Therefore, all official acts performed by the provisional government and the Republic of Hawai'i after the *Lili'uokalani assignment* and the *Agreement of restoration*; and all actions done by the United States and its surrogates—the Territory of Hawai'i and the State of Hawai'i, for and on behalf of the Hawaiian Kingdom

[189] I.C. MacGibbon, *Customary International Law and Acquiescence*, 33 BRIT. Y. B. INT'L L. 115, 117 (1957).
[190] United States Senate, 58th Cong., 2d Sess., Doc. no. 162, *Proceedings of the Alaskan Boundary Tribunal*, vol. vii, 619 (1904).
[191] *See* Lauterpacht, *supra* note 173, at 395.

since the occupation began 12 noon on August 12, 1898, cannot be recognized as legal and valid without violating international law. The only exceptions, according to the *Namibia* case, are the registration of births, deaths and marriages.

10.2. A temporary remedy to this incredible quandary, which, no doubt, will create economic ruination for the United States, is for the Commander of the United States Pacific Command to establish a military government and exercise its legislative capacity, under the laws of occupation. By virtue of this authority, the commander of the military government can provisionally legislate and proclaim that all laws having been illegally exercised in the Hawaiian Islands since January 17, 1893 to the present, so long as they are consistent with Hawaiian Kingdom laws and the law of occupation, shall be the provisional laws of the occupier.[192] The military government will also have to reconstitute all State of Hawai'i courts into Article II Courts in order for these contracts to be enforceable, as well as being accessible to private individuals, whether Hawaiian subjects or foreign citizens, in order to file claims in defense of their rights secured to them by Hawaiian law. All Article I Courts, *e.g.* Bankruptcy Court, and Article III courts, *e.g.* Federal District Court, that are currently operating in the Islands are devoid of authority as Congress and the Judicial power have no extraterritorial force, unless they too be converted into Article II Courts. The military government's authority exists under and by virtue of the authority of the President, which is provided under Article II of the United States Constitution.

10.3. The military government should also provisionally maintain, by decree, the executive branches of the Federal and State of Hawai'i governments in order to continue services to the community headed by the Mayors of Hawai'i island, Maui, O'ahu and Kaua'i, who should report directly to the commander of the military government. The Pacific Command Commander will replace the function of the State of Hawai'i Governor, and the legislative authority of the military governor would also replace the State of Hawai'i's legislative branch, *i.e.* the State Legislature and County Councils. The Legislative Assembly of the Hawaiian Kingdom can take up the lawfulness of these provisional laws when it reconvenes during the transitional stage of ending the occupation. At that point, it can determine whether or not to enact these laws into Hawaiian statute or replace them altogether with new statutes.[193]

10.4. Without having its economic base spiral out of control, the United States is faced with no other alternative but to establish a military government. But another serious reason to establish a military government, aside from the economic factor, is to put an end to war crimes having been committed and are currently being committed against Hawaiian subjects by individuals within the Federal and State of Hawai'i governments. Their willful denial of

[192] *See* VON GLAHN, *supra* note 116, at 777.
[193] *See* FEILCHENFELD, *supra* note 158, at 145.

Hawai'i's true status as an occupied State does not excuse them of criminal liability under laws of occupation, but ultimate responsibility, however, does lie with the United States President, Congress and the Supreme Court. "War crimes," states von Glahn, "played an important part of the deliberations of the Diplomatic Conference at Geneva in 1949. While the attending delegates studiously eschewed the inclusion of the terms 'war crimes' and 'Nuremberg principles' (apparently regarding the latter as at best representing particular and not general international law), violations of the rules of war had to be, and were, considered."[194]

10.5. Article 146 of the Geneva Convention provides that the "High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article." According to Marschik, this article provides that "States have the obligation to suppress conduct contrary to these rules by administrative and penal sanctions."[195] "Grave breaches" enumerated in Article 147, that are relevant to the occupation of the Hawaiian Islands, include: "unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention…[and] extensive destruction and appropriation of property, not justified by military necessity."[196] Protected persons "are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."[197] According to United States law, a war crime is "defined as a grave breach in any of the international conventions signed at Geneva August 12, 1949, or any protocol to such convention to which the United States is a party."[198] Establishing a military government will shore up these blatant abuses of protected persons under one central authority, that has not only the duty, but the obligation, of suppressing conduct contrary to the Hague and Geneva conventions taking place in an occupied State. The United States did ratify both Hague and Geneva Conventions, and is considered one of the "High Contracting Parties."[199] On July 1, 2002, the International Criminal Court was established after the ratification of 60 States as a permanent, treaty based, independent

---

[194] *See* VON GLAHN, *supra* note 116, at 248.
[195] Axel Marschik, *The Politics of Prosecution: European National Approaches to War Crimes*, (Timothy L. H. McCormack and Gerry J. Simpson, ed.s), THE LAW OF WAR CRIMES: NATIONAL AND INTERNATIONAL APPROACHES 72, note 33 (1997).
[196] Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949), Article 147.
[197] *Id*., Article 4.
[198] 18 U.S. Code §2441(c)(1).
[199] Hague Convention No. IV, October 18, 1907, Respecting the Laws and Customs of War on Land, 36 U.S. Stat. 2277; Treaty Series 539; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, Treaties and Other International Acts Series, 3365.

court under the Rome Statute (1998) for the prosecution of individuals, not States, for war crimes.

Thus, the primary objective is to ensure the United States complies with its duties and obligations under international law, through his Commander of the United States Pacific Command, to establish a military government for the administration of Hawaiian Kingdom law. As explained hereinbefore, the United States military does not possess wide discretionary powers in the administration of Hawaiian Kingdom law, as it would otherwise have in the occupation of a State it is at war with. Hence, belligerent rights do not extend over territory of a neutral State, and the occupation of neutral territory for military purposes is an international wrongful act.[200] As a result, there exists a continued exploitation of Hawaiian territory for military purposes in willful disregard of the 1893 executive agreements of administering Hawaiian law and then restore the Hawaiian government *de jure*. In a neutral State, the Hague and Geneva conventions merely provide guidance for the establishment of a military government.

11. *CONCLUSION*

11.1. As hereinbefore explained, the continuity of the Hawaiian State is undisputed, and for the past 13 years, the *acting* government has acquired a customary right to represent the Hawaiian State before international bodies by virtue of the doctrine of acquiescence, as well as explicit acknowledgment by States of the government's *de facto* authority. Because the Hawaiian Kingdom was an independent State in the nineteenth century, as acknowledged by the Permanent Court of Arbitration in 2001 by *dictum*,[201] international law provides for a presumption of the Hawaiian State's continuity, which "may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains."[202] Therefore, any United States government agency operating within the territory of the Hawaiian State that was established by the Congress, *i.e*. Federal agencies, the State of Hawai'i, and County governments, is "illegal" because Congressional authority is limited to the territory of the United States.[203]

11.2. After firmly establishing there is no "valid demonstration of legal title, or sovereignty," on the part of the United States over the Hawaiian Islands, and therefore the Hawaiian State continues to exist, it next became necessary to ascertain the legitimacy of the *acting* government to represent the Hawaiian

[200] Hague Convention VI (1907), *Rights and Duties of Neutral States*, Article I.
[201] *Supra*, para. 3.1. The Court acknowledged: "…in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."
[202] *Supra*, para. 2.6.
[203] *Supra,* para. 3.11.

State before international bodies. The first international body to be accessed by the *acting* government was the Permanent Court of Arbitration in 1999, followed by the United Nations Security Council in 2001, the United Nations General Assembly in 2012, the United Nations Secretary General as the depository for the International Criminal Court in 2012, and the Swiss Government as the depository for the 1949 Geneva Conventions in 2013. Access to these international bodies was accomplished as a State, which is not a member of the United Nations. The *de facto* authority of the *acting* government was acquired through time since the arbitral proceedings were held at the Permanent Court of Arbitration, by acquiescence, in the absence of any protest, and, in some cases, by direct acknowledgment from States, *i.e.* United States, when it requested permission from the *acting* government to access the arbitral records;[204] Rwanda, when it provided notice to the *acting* government of its intention to report the prolonged occupation of the Hawaiian Kingdom to the General Assembly;[205] China, when it accepted the Complaint as a non-member State of the United Nations from the *acting* government while it served as President of the United Nations Security Council;[206] Qatar, when it accepted the Protest and Demand as a non-member State of the United Nations from the *acting* government while it served as President of the General Assembly's 66th Session;[207] and Switzerland, when it accepted the Instrument of Accession from the *acting* government as a State while it served as the repository for the 1949 Geneva Conventions.[208]

11.3. The *acting* government, as nationals of an occupied State, took the necessary and extraordinary steps, by necessity and according to the laws of our country and international law, to reestablish the Hawaiian government in an *acting* capacity in order to exercise our country's preeminent right to "self-preservation" that was deprived through fraud and deceit; and for the past 13 years the *acting* government has acquired a customary right under international law in representing the Hawaiian State during this prolonged and illegal occupation.

David Keanu Sai, Ph.D.

[204] *Supra*, para. 9.4.
[205] *Supra*, para. 9.5.
[206] *Supra*, para. 9.6.
[207] *Id*.
[208] *Id*.

Exhibit “2”

Dexter K. Kaiama #4249
111 Hekili Street, Suite A1607
Kailua, Hawai'i 96734
Phone No. (808) 284-5675
Attorney for Defendant
Robin Wainuhea Dudoit

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I,	CASE NO. CR 14-1-0820(3)
vs.	COUNT ONE: ROBBERY IN THE SECOND DEGREE
Robin Wainuhea Dudoit,	COUNT TWO: ROBBERY IN THE SECOND DEGREE
Defendant.	COUNT THREE: UNAUTHORIZED ENTRY INTO MOTORE VEHICLE IN THE FIRST DEGREE
	COUNT FOUR: TERRORISTIC THREATENING IN THE FIRST DEGREE
	COUNT FIVE: HARRASSMENT
	DEFENDANT Robin Wainuhea Dudoit's JOINDER in DEFENDANT ENGLISH'S MOTION TO DISMISS CRIMINAL COMPLAINT (CR 14-1-0819(3)) PURSUANT TO HRPP 12(b)(1), FILED FEBRUARY 6, 2015; CERTIFICATE OF SERVICE
	EVIDENTIARY HEARING:
	DATE: March 5, 2015
	TIME: 10:00 A.M.
	JUDGE: Joseph E. Cardoza

DEFENDANT Robin Wainuhea Dudoit's JOINDER IN DEFENDANT ENGLISH'S MOTION TO DISMISS CRIMINAL COMPLAINT (CR 14-1-0819(3)), FILED FEBRUARY 6, 2015

COMES NOW Defendant Robin Wainuhea Dudoit, by and through his above-named counsel, and hereby files NOTICE of his JOINDER in Defendant English's Motion to Dismiss Criminal Complaint (Cr 14-1-0819(3)) filed on February 6, 2015. By his Joinder, Defendant Dudoit hereby incorporates

Defendant English's Motion to Dismiss, attached Memorandum in Support, Declaration of David Keanu Sai, Ph.D, and Exhibits "1-12" as though fully set forth herein and seeks the same relief sought in said motion to dismiss.

DATED: Honolulu, Hawai'i, February 6, 2015.

Dexter K. Kaiama
Attorney for Defendant
Robin Wainuhea Dudoit

CERTIFICATE OF SERVICE

I, Dexter K. Kaiama, hereby certify that a true and exact copy of the foregoing document was duly served by hand-delivery or mailing, postage prepaid to the following:

Lloyd C. Phelps, II
Deputy Prosecuting Attorney
150 South High Street
Wailuku, Hawai'i 96793
Attorney for STATE OF HAWAII

Hayden Aluli, Esq.
2180 Kaho'okele Street
Wailuku, Hawai'i 96793
Attorney for Defendant
Albert Keakahi Dudoit, Jr.

Samuel G. MacRoberts, Esq.
Law Office of Philip Lowenthal
33 N. Market St., Ste. 101
Wailuku, Hawai'i 96793
Attorney for Defendant
Floyd Kumukoa Kapuni

DATED: Honolulu, Hawai'i, February 6, 2015.

Dexter K. Kaiama
Attorney for Defendant
Robin Wainuhea Dudoit

Exhibit “3”

D. Kaigma, Esq.

DEPARTMENT OF THE PROSECUTING ATTORNEY 207

LLOYD C. PHELPS II 8770
Deputy Prosecuting Attorney
County of Maui
Wailuku, Maui, Hawaii 96793
Tel. No. 270-7630
Fax. No. 270-7927

Attorney for the State of Hawaii

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

STATE OF HAWAII	CR. NO. 14-1-0819(3)
v.	COUNT ONE: ROBBERY IN THE SECOND DEGREE
KAIULA KALAWE **ENGLISH**,	COUNT TWO: ROBBERY IN THE SECOND DEGREE
Defendant.	COUNT THREE: UNAUTHORIZED ENTRY INTO A MOTOR VEHICLE IN THE FIRST DEGREE
	COUNT FOUR: TERRORISTIC THREATENING IN THE FIRST DEGREE
	COUNT FIVE: HARASSMENT
	MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS CRIMINAL COMPLAINT PURSUANT TO HRPP 12(b)(1); CERTIFICATE OF SERVICE
	Hearing Date: 3/5/2015 Time: 10:00 a.m. Judge: Joseph E. Cardoza

MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS
CRIMINAL COMPLAINT PURSUANT TO HRPP 12(b)(1)

I. INTRODUCTION.

On February 6, 2016, Defendant ROBIN WAINUHEA DUDOIT ("Defendant") filed a "Motion to Dismiss Criminal Complaint Pursuant to HRPP 12(b)(1)" ("Defendant's Motion"). Based upon the argument and authorities cited below, Defendant's claims are without merit and Defendant's Motion should be denied.

II. STATEMENT OF FACTS.

On November 14, 2014, the Grand Jury of the Second Circuit, State of Hawai`i indicted Defendant in Cr. No. 14-1-0820(3) for the following offenses arising from an incident that occurred on May 25, 2014:[1]

> Count One: Robbery In The Second Degree, in violation of Hawai`i Revised Statutes ("HRS") § 708-841(1)(a);
>
> Count Two: Robbery In The Second Degree, in violation of HRS § 708-841(1)(a);
>
> Count Three: Unauthorized Entry into a Motor Vehicle in the First Degree, in violation of HRS § 708-836.5;
>
> Count Four: Terroristic Threatening in the First Degree, in violation of HRS § 707-716(1)(b);

[1] Floyd Kumukoa Kapuni, Kaiula English and Albert Keakahi Dudoit Jr. were charged as co-defendants in Counts One through Five of the same indictment.

Count Five: Harassment, in violation of HRS § 711-1106(1)(a) and/or (b).

II. ARGUMENT.

A. THE CIRCUIT COURT OF THE SECOND CIRCUIT HAS JURISDICTION OVER THE DEFENDANT AND OVER THE SUBJECT MATTER OF THIS CASE.

i. ***The Constitution And the Laws Of the State Of Hawaii Provide For Enforcement Of Criminal Of Laws and the Penal Code Over All Persons In Hawaii.***

The right of the State to enforce the penal laws and regulations within the State cannot be seriously questioned. Article IX, Section 10 of the Hawaii Constitution gives the State the power to provide for the safety of the people:

> The law of the splintered paddle, mala-hoe kanawai, decreed by Kamehameha I -- Let every elderly person, woman and child lie by the roadside in safety -- shall be a unique and living symbol of the State's concern for public safety.
>
> The State shall have the power to provide for the safety of the people from crimes against persons and property. [Add Const Con 1978 and election Nov. 7, 1978.]

Hawaii Constitution, Article IX, Section 10.

The Hawaii Supreme Court has noted that Chapter 701 of the Hawaii Revised Statutes (hereinafter "H.R.S."), was enacted to " ... codify the general principles of the penal law and to define and codify certain specific offenses which constitute harms to basic social interests which the Code seeks to protect." H.R.S. § 701-103. Enforcement of the penal laws by the police,

county prosecuting attorneys and the judges serve to protect all people in Hawaii. This protection applies to all regardless of political status. It embraces residents and visitors, children and adults, sovereigns (who sincerely believe in the existence of a "Kingdom of Hawaii"), as well as citizens of the State of Hawaii.

The courts of the State of Hawaii have not hesitated to interpret and enforce the existing laws subsequent to the Admission of Hawaii as a State of the United States. *See generally*, Koike v. Board of Water Supply, 44 Haw. 100, 352 P.2d 835 (1960); In the Matter of Island Airlines, Inc., 44 Haw. 634, 361 P.2d 390 (1961); and State v. Miyasaki, 62 Haw. 269, 614 P.2d 915 (1980).

Under the existing legal system, it would be unconstitutional under the Hawaii Constitution for any court in the State of Hawaii to refuse to accept jurisdiction over Defendant or over this case. In the case of State v. Kailua Auto Wreckers, Inc., 62 Haw. 222, 223, 615 P.2d 730, 733 (1980), the Hawaii Supreme Court stated:

> Selective enforcement of a criminal law is unconstitutional where it is the result of intentional or purposeful discrimination deliberately based upon an unjustifiable standard such as race, religion or other arbitrary classification.

There is currently no legally recognized authority that would empower this Court to accept claims of individuals like Defendant, who assert their sovereignty as citizens of the Kingdom of Hawaii, and who claim that they are beyond the existing laws and powers of the Hawaii State Court System. If there existed a treaty or other document that is legally recognized by the United States and State of Hawaii which would exclude individuals such as Defendant from the jurisdiction of the Hawaii State Courts, then Defendant's position may possibly be accepted as having merit.

However, it is not for this Court to make this determination. Only if the State of Hawaii and the United States recognized such a separation of jurisdictions and powers would this Court have authority to acknowledge Defendant's claim. The proper avenue for Defendant to have the sovereignty and jurisdiction of the "Kingdom of Hawaii" recognized by this Court is to proceed in the appropriate State, Federal and United Nations governing bodies for lawful recognition of these claims. *See* State v. Lorenzo, 77 Haw. 219, 883 P.2d 641 (App. 1994) and State v. French, 77 Haw. 222, 883 P.2d 644 (App. 1994) (where the Hawai'i Intermediate Court of Appeals found that no evidence was presented to support any claim that the Kingdom of Hawaii continues to exist).

To acknowledge jurisdictional claims asserting individual citizenship in non-existent governments would result in anarchy with each person being able to claim an individualized form of sovereignty. In such a situation, each person would be answerable to no authority and could decide for him or herself how to act, beyond any societal control. There would be no way to maintain public safety and to enforce criminal laws such as those the Defendant is currently charged with violating. The lives and property of all people, sovereigns included, would be much less safe.

ii. ***The Hawaii Constitution Established The State Courts And Provides For Court Jurisdiction And Rules.***

Article VI of the State Constitution provides for the establishment of a court system with the courts having original and appellate jurisdiction as provided by law. Haw. Const. Art. VI, Sec. 1. The State Supreme Court has held that:

> The inherent power of a court is the power to protect itself, the power to administer justice whether any previous form or remedy has been granted or not, the power to promulgate rules for its practice, and the power to provide process where none exists.

State v. Moriwake, 65 Haw. 47, 48, 647 P.2d 705, 708 (1982).

Chapter 603 of the H.R.S. governs the Circuit Courts. This Chapter establishes the various State Circuit Courts,

including the Circuit Court of the Second Circuit. H.R.S. § 603-1. The Circuit Courts are also given jurisdiction over criminal matters which are committed within their respective districts, or transferred to them from some other circuit. H.R.S. § 603-21.5. State law provides the Circuit Courts many powers, including the power to "make and issue all orders and writs necessary or appropriate in aid of their original or appellate jurisdiction," as well as to enter, enforce, and award judgments, decrees, and mandates. H.R.S. § 603-21.9(1) and (6).

Considering Haw. Const. Art. VI, Sec. 1, and Chapter 603 of the H.R.S., it is clear that the laws provide ample provisions for this Court to exercise jurisdiction over the Defendant in this case. The instant offenses occurred in the County of Maui, State of Hawaii, and the Circuit Court of the Second Circuit holds proper jurisdiction over this case.

If the Defendant argues that he is a sovereign native Hawaiian, outside the jurisdiction of State law, and this theory were accepted by the Court, the Defendant, and all persons similarly situated, would be able, for example, to rob other people in this State, whether they are residents or visitors, and they would be free from punishment under the existing laws. It is not hard to imagine the consequences of such a court ruling on the public order in this State. It is important to remember that

the State Constitution and the laws of Hawai`i were written to protect the rights of the Defendant as well as all others. If only some people are protected and subject to State law, none are really protected.

iii. ***The Constitution And Laws Of The State Of Hawaii Recognize And Protect Native Hawaiian Rights, Subject To State Authority.***

The preamble to the Constitution of the State of Hawaii expresses the highest ideals while specifically recognizing a precious and unique Hawaiian heritage:

> We, the people of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian Heritage and uniqueness as an island State, dedicate all our efforts to fulfill the philosophy decreed by the Hawaii State motto, "Ua mau ke ea o ka aina i ka pono." [This has been translated as "the life of the land is perpetuated in righteousness."]
>
> We reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life we desire.
>
> We reaffirm our belief in a government of the people, by the people, and for the people, and with an understanding and compassionate heart toward all the peoples of the earth, do hereby ordain and establish this constitution for the State of Hawaii.

Am. Const Con 1978.

The State Constitution specifically adopts the Federal Constitution. However, it is clear that the people of Hawaii expanded upon the United States Constitution when they adopted the Constitution of the State of Hawaii. By adopting the United

States and State Constitutions the People of Hawaii, through a democratic process, obligated themselves to both the rights and to the obligations inherent under both Constitutions and the laws promulgated thereunder.

There has been serious discussion among people within the State of Hawaii regarding whether the overthrow of the Hawaiian Monarchy during the 1890's, which led to the subsequent admission of Hawaii as a State in the union of the United States of America, was illegal. It includes issues of enforcement of the Hawaiian Homes Commission Act, sovereignty and reparation rights, as well as other issues.

The State recognizes that there are some State laws that provide for special protection of Hawaiian rights and traditions. Where practices associated with the ancient Hawaiian way of life have, without harm to anyone, been continued, continuance of these practices are insured for so long as no actual harm is done thereby. (*See generally*, e.g., H.R.S. §§ 1-1 and 7-1, and Kalipi v. Hawaiian Trust Co., 66 Haw. 1, 656 P.2d 745 (1982), pertaining to the lawful occupants' use of an ahupua'a and their allowed entry into undeveloped lands within the ahupua'a to gather food, water, and building materials). The above constitutional and legal provisions indicate preservation of the rights and culture of Native Hawaiians. However, none of

the laws limit the jurisdiction of the Court over the Defendant in this case. The State Constitution and the laws promulgated thereunder are accepted by the courts of this State as binding upon all persons in the State of Hawaii. Kailua Auto Wreckers, *supra*.

The Defendant cites Nishitani v. Baker, 82 Haw. 281, 921 P.2d 1182 (1996), and states that the "'Prosecutor' must prove beyond a reasonable doubt that the State of Hawaii is in fact a legitimate government." Nishitani v. Baker, however, does not stand for this proposition. In fact, Nishitani v. Baker rejected the argument that the defendants, as "'birth descendants of Native Hawaiians,'" were not subject to the government and courts of the State of Hawaii. Id. at 290, 1191.

The Defendant also cites Nishitani v. Baker to state that "the burden of proving jurisdiction . . . clearly rests with the prosecution." Id. This statement by the Intermediate Court of Appeals was made in relation to H.R.S. § 701-114(1)(c), specifically providing that "in a criminal case, a defendant may not be convicted unless the State proves beyond a reasonable doubt 'facts establishing jurisdiction.'" Id. The State fully intends to prove facts establishing jurisdiction beyond a reasonable doubt at the Defendant's jury trial to include: the Defendant was a person in the State of Hawaii and County of Maui,

at the time the offenses were committed; and the enumerated offenses are criminal in nature and covered under the State of Hawaii penal code.

B. THE HAWAII SUPREME COURT HAS ROUTINELY REJECTED SIMILAR ARGUMENTS REGARDING LACK OF JURISDICTION OVER SIMILARLY SITUATED DEFENDANTS.

Recent Hawaii court cases have reaffirmed State Circuit Court jurisdiction over Defendant's proffering similar arguments as Defendant. In State v. Kaulia, 128 Hawaii 479, 487, 291 P.3d 377, 385 (2013), the Supreme Court held that "the [S]tate's criminal jurisdiction encompasses all areas within the territorial boundaries of the State of Hawaii." The Supreme Court went on to rule "whatever may be said regarding the lawfulness of its origins, the State of Hawaii . . . is now, a lawful government" and "individuals claiming to be citizens of the Kingdom and not of the State are not exempt from application of the State's laws." Id. (citations, internal quotation marks and brackets omitted). In so ruling, the Supreme Court of the State of Hawaii has clearly rejected the notion that the Circuit Court lacks jurisdiction to try cases such as the Defendant's current case.

III. CONCLUSION.

Based on the foregoing reasons, the State of Hawaii respectfully submits that this Court has jurisdiction over the

Defendant and over the subject matter of this case, and therefore the Defendant's motion should be denied.

DATED: Wailuku, Hawaii, March 2, 2015.

Respectfully submitted,

STATE OF HAWAII

By _____
LLOYD C. PHELPS II
Deputy Prosecuting Attorney
County of Maui

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Memorandum in Opposition to Defendant's Motion to Dismiss Criminal Complaint Pursuant to HRPP 12(b)(1), was duly served upon DEXTER K. KAIAMA, ESQ., Attorney for the Defendant, 111 Hekili Street, Suite A1607, Kailua, Hawaii 96734, by mailing a copy of to him on the 2nd day of March, 2015.

_____
LLOYD C. PHELPS II
Deputy Prosecuting Attorney
County of Maui

Exhibit “4”

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, vs. KAIULA KALAWE ENGLISH Defendant.	Crim. No. 14-1-0819 TRANSCRIPT OF PROCEEDINGS
STATE OF HAWAII vs. ROBIN WAINUHEA DUDOIT Defendant.	Crim. No. 14-1-0820

TRANSCRIPT OF PROCEEDINGS

before the Honorable JOSEPH P. CARDOZA, Circuit Court Judge presiding on Thursday, March 5, 2015. Defendant English's Motion to Dismiss Criminal Complaints Pursuant To HRPP 12(1)(b); Defendant Robin Wainuhea Dudoit's Joinder In Defendant English's Motion to Dismiss Criminal Complaint Pursuant To HRPP 12(1)(b).

TRANSCRIBED BY:
Beth Kelly, RPR, CSR #235
Court Reporter

APPEARANCES:

LLOYD PHELPS, Esq. Attorney for the State
Deputy Prosecuting Attorney
County of Maui
Wailuku, Hawaii

DEXTER KAIAMA, Esq. Attorney for the Defendants
111 Hekili Street
#A1607
Kailua, Hawaii

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VD
Dr. Sai	6				

THURSDAY, MARCH 5, 2015

THE CLERK: Calling Criminal Numbers 14-1-0819, State of Hawaii versus Kaiula Kalawe English; and Criminal Number 14-1-0820, State of Hawaii versus Robin, Wainuhea Dudoit; for, one, defendant English's motion to dismiss criminal complaints pursuant to HRPP 12(1)(b); and two, defendant Robin Wainuhea Dudoit's joinder in defendant English's motion to dismiss criminal complaint pursuant to HRPP 12(1)(b).

MR. PHELPS: Good morning, your Honor, Lloyd Phelps appearing on behalf of the State for all matters.

MR. KAIAMA: Good morning, your Honor, Dexter Kaiama on behalf of Kaiula English and Robin Dudoit. Mr. English and Mr. Dudoit are present.

THE COURT: All right. Good morning, Counsel. Good morning, Mr. English. Good morning, Mr. Dudoit.

All right. This is the defendant's motion and joinder. And so, Mr. Kaiama, is there anything you wanted to present?

MR. KAIAMA: Yes, just first order of business, your Honor. I just wanted to make sure, because I filed Mr. Dudoit's joinder in the case --

THE COURT: You did?

MR. KAIAMA: -- to execute the same paper

and time for the Court. It's essentially the same motion.

But I just wanted it understood, and I believe it is that Mr. Dudoit is bringing the exact same argument and motion to dismiss as Mr. English is bringing by his motion. Yes? Okay. Thank you.

Your Honor --

MR. PHELPS: State's understanding, your Honor.

MR. KAIAMA: Okay. Yes.

Your Honor, actually as part of -- before we make oral argument on the motion, your Honor, as I understand, if this was scheduled for an evidentiary hearing, I did retain and I do have an expert witness to testify. And I would like to present his expert testimony before we proceed with our oral argument.

THE COURT: All right. If you have a witness to testify.

MR. KAIAMA: I would be calling Dr. Keanu Sai.

THE CLERK: I'm sorry, sir. Can you please stand and raise your right hand?

DR. DAVID KEANU SAI

was called as a witness by and on behalf of the Defendants and after having been first duly sworn was examined and testified as follows:

THE CLERK: So sworn. Please be seated.

THE COURT: You may proceed with your examination of the witness.

MR. KAIAMA: Thank you, your Honor. Sorry, I think I turned on my phone. Excuse me. Excuse me, your Honor.

DIRECT EXAMINATION

BY MR. KAIAMA:

Q. Good morning, Dr. Sai. Would you please state your name and your present occupation for the record?

A. David Keanu Sai. I'm a lecturer at the University of Hawaii, Windward Community College.

Q. Okay. Dr. Sai, before I ask you about your testimony in this case, I'm going to ask you a few questions about your qualifications. Is that okay with you?

A. That's fine.

Q. Dr. Sai, can you please provide us a background, your educational background from high school to the present date?

A. I can. Well, got a high school diploma from Kamehameha, 1982. An Associates Degree from New Mexico Military Institute, a military college. A Bachelor's in sociology from the University of Hawaii. That was 1987.

A Master's Degree in political science, specializing in international relations, 2004. And a Ph.D. in political science focusing on international relations and public law, which includes international law, United States law, and Hawaiian Kingdom law of the 19th century. And that was 2008.

Q. Okay. Tell us a little bit about obtaining your Ph.D., Dr. Sai. How did you go about doing that? What's the requirements and what did you need to do? What was the process of your getting that Ph.D.?

A. Well, you first need a Master's Degree. In my case it was in political science specializing in international relations.

A Ph.D. is the highest degree you can get within the academy. And a Ph.D. is based upon something original to contribute to the political science field and law field, because my area's public law.

What takes place is you begin with a proposal. You have to give a defense. And you have a committee that -- I had a committee of six professors.

And you basically present what your research is going to be. What they do is to ensure that this research has not been done already by another Ph.D.. So it's called a lit review or literature review.

My area that I proposed was researching

Hawaii's legal and political status since the 18th century to the present and incorporating international relations, international law, and Hawaiian Kingdom law and United States law.

That proposal was passed. Then you have to go into what is called the comprehensive exams.

So comprehensive exams is where each of your professors, in this case, six of them, would provide two questions to test my comprehension of the topic of the research -- of the proposed research.

And they would pose two questions each. I would have to answer one of the two. Each question average about 30 pages. Okay.

You're given one week to complete from Monday -- from Monday to Monday. It's a pass or fail. It's not graded.

During that process I successfully completed the comprehensive exams. And then you move to what is called all-but-dissertation. That's when you begin the writing of your dissertation through the research.

The title of my doctorate dissertation was the continuity of the Hawaiian Kingdom, beginning the transition from occupied to restored state or country.

Successfully defended that before my committee. And it was submitted in time for me to

graduate in 2008.

Q. Okay. Would you be able to tell us, and just for the record, who was on your committee, Dr. Sai?

A. My chairman was Neal Milner. He's a pretty famous political pundit on Channel 4 news. His area is -- background is law and judicial behavior.

Katharina Heyer, political scientist, public law.

John Wilson, sovereignty, goes back to the Greek Polis states through Hobbes, Rousseau, political science and law regarding sovereignty.

Then I had a Professor Avi Soifer, the Dean of the Law School. His background is U.S. Constitutional law.

I also had as an outside member, Professor Matthew Craven from the University of London, who teleconferenced in for my defense. His background is state sovereignty and international law.

And then I also had as the final professor, Professor Kanalu Young from Hawaiian Studies, whose background was Hawaiian Chiefs. But he regrettably passed away before my defense. So Professor Jon Osorio stepped in from the Hawaiian Studies Department.

They made up my committee.

Q. And again, it's obvious, Dr. Sai, you did

pass your dissertation defense?

A. And that's what I want to -- ensure a clear understanding. When you defend your dissertation, you're not arguing your dissertation. You have to defend it against the committee members who try to break it. And if they're not able to break it, then you're awarded the Ph.D. and that becomes your specialty.

Q. Okay. And it's clear in this case and it's of particular interest to me that the Dean of the law school was on this committee; correct?

A. Yes.

Q. Okay. And he had an opportunity to so-called challenge or break your dissertation defense as well?

A. That's part of the academic process.

Q. Okay. And did he come to any conclusion concerning your dissertation?

A. They couldn't deny what I proposed and what I argued. Because if they could deny it, I wouldn't have my Ph.D.. They would find a hole in the argument or the research.

Q. Okay. Thank you, Dr. Sai.

Since the obtaining your dissertation defense, have you had any publications that's been -- any articles that have been published in, I guess, relevant journals or journals of higher education?

A. Law review articles. One was published in the University of San Francisco School of Law, Journal of Law and Social Challenges. Another one at the University of Hawaii, Hawaiian Jounal of Law and Politics, which is published on HeinOnline, which is a legal publication, Hawaiian.

Q. I also understand and, Dr. Sai, just so you know, we did provide as Exhibit 1 in the motion, your curriculum vitae. And so it does provide much of the information that you're testifying about, but I wanted to ask you about, besides publication, I know you also have -- or tell me, you've also written education material?

A. Yes.

Q. Can you explain that?

A. Actually I have a history text that is used in the high school and college levels. It's actually a watered down version of my doctorate dissertation. Much more user friendly for teaching the legal and political history of Hawaii that begins with Kamehameha I and brings it up-to-date.

So it is used to teach. It's part of the curriculum. And it is actually required reading at the University of Hawaii Maui College, the community colleges, the University of Hawaii at Manoa. And I did find that

it's actually required reading and used in NYU, New York University, and University of Massachusetts at Boston.

Q. Okay. And what is the name of that education material, Dr. Sai?

A. Ua mau kea ea Sovereignty Endures.

Q. Thank you. In addition to publications, Dr. Sai, I understand that you've made a number of presentations. In fact, most recently presentations at facilities or educations -- higher educational facilities. Can you give me a little bit of background or other kinds of presentations that you've made and what the topics of those presentations were?

A. I've been invited quite often to present to conferences, to the universities. This past April I was giving guest lectures at the University of NYU, New York University; Harvard; University of Massachusetts at Boston and Southern Connecticut State University.

Other universities that I've given presentations to as well span across here in Hawaii, the colleges, the high schools.

Just recently I was invited as a guest presenter in a conference at Cambridge University History Department in London. And the conference is focusing on non-European states in the age of imperialism.

Q. Very good. And, Dr. Sai, again, all of this,

both your publications, your educational materials, as well as your presentations, is in your area of expertise; correct?

A. Yes.

Q. And just for the record again, can you tell us what that area of expertise is?

A. The continuity of the Hawaiian state under international law.

Q. Okay. Very good. And, Dr. Sai, you have -- have you been qualified as an expert or to testify as an expert in any other proceedings?

A. Yes. There was a case in Hilo, Judge Freitas. Tamanaha -- it was a lender versus Tamanaha, I believe. I can't recall the exact case.

Q. And you were qualified as an expert and you were allowed to provide your expert opinion in that case concerning your area of expertise?

A. Yes.

MR. KAIAMA: Your Honor, at this time we would ask that Dr. Sai be qualified as an expert witness to testify about matters concerning our motion to dismiss.

MR. PHELPS: The State has no objection, your Honor.

THE COURT: All right. There being no objection, the Court will so receive the witness as an

expert as offered.

MR. KAIAMA: Thank you, your Honor.

BY MR. KAIAMA:

Q. Dr. Sai, based on all of your research, based on your background and your education and this specialty, you understand that on behalf of my clients I am bringing a motion to dismiss for lack of subject matter jurisdiction?

A. Yes.

Q. Based on all of your research and your expertise in this area, Dr. Sai, have you reached any conclusions about this, and can you tell us what your conclusions are?

A. That the Court would not have subject matter jurisdiction as a result of international law.

Q. And if you can explain or perhaps expand on that explanation and tell us why the Court does not have subject matter jurisdiction in this case?

A. Sure. Well, it goes back to what the status of Hawaii was first, not necessarily what we are looking at today.

So when you look at Hawaii and its political and legal status on November 28th, 1843 Great Britain and France jointly recognized Hawaii as an independent state.

July 6th, 1844 Secretary of State, John C.

Calhoun, also recognized formally the independence of the Hawaiian Kingdom.

Now, to determine dependence under international law applies to the political independence, not physically independent.

From that point Hawaii was admitted into the Family of Nations.

By 1893 it had gone through government reform whereby it transformed itself into a constitutional monarchy that fully adopted a separation of powers since 1864.

By 1893 the Hawaiian Kingdom as a country had over 90 embassies and consulates throughout the world. The United States had an embassy in Honolulu. And the Hawaiian Kingdom had an embassy in Washington D.C.. And Hawaiian consulates throughout the United States, as well as U.S. consulates throughout Hawaii.

So in 1893 clearly Hawaii was an independent state.

Now, under international law there is a need to discern between a government and a state. The state is what was recognized as a subject of international law, not its government. The government was merely the means by which that recognition took place in 1843 and 1844.

Now, a government is the political organ of a

state. What that means is it exercises the authority of that state. Every government is unique in its geopolitical, but every state is identical under international law. It has a defined boundary. It has independence. It has a centralized government. And it has territory -- people within its territory and the ability to enter into international relations.

What happened in 1893 on January 17th, as concluded by the United States investigation, presidential investigation, is that the Hawaiian government was overthrown, not the Hawaiian state. Okay.

Now, this is no different than overthrowing the Iraqi government in 2003. By the United States overthrowing the Iraqi government that did not equate to the overthrow of Iraq as a state.

That situation is what we call an international law occupation. Okay. Occupation is where the sovereignty is still intact, but international law mandates the occupier to conform as a proxy, a temporary proxy of a government to temporarily administer those laws of that particular country.

Now, prior to 1899, which is we're talking about 1893, the illegal overthrow of the government, customary international law would regulate the actions taken by governments that occupy the territory of another

country.

Those customary laws are the law of occupation is to maintain the status quo of the occupied state. The occupier must administer the laws of the occupied state and can not impose its own laws within the territory of an occupied state, because sovereignty and independence is still intact.

So by 1899, we have what is called the Hague Conventions. Later 1949, the Geneva Conventions. The Hague Conventions merely codified customary international law, fully recognized. And 1949 again codified customary international law and the gaps that may have been in the Hague Conventions.

So when we look at 1893, it is clear the government was overthrown, but it is also clear that the State wasn't, because the United States did not have sovereignty over Hawaii. The only way that you can acquire sovereignty of another state under international law is you need a treaty. Okay, whether by conquest or by voluntary transfer.

An example of a voluntary transfer that United States acquired sovereignty would be the 1803 Louisanna Purchase. An example of a treaty of conquest where the United States acquired territory through a war, 1848, Treaty of Guadalupe Hidalgo, Mexican America War

making the Rio Grande the dividing point.

You didn't have that in 1893. In fact, you had an attempt to do a treaty, but President Cleveland withdrew that treaty in 1893 in March and investigated the situation. Never resubmitted that treaty. In other words, in the alternative he entered into another treaty with the Queen to reinstate the Hawaiian government. And that's called a sole executive agreement. That took place on December 18th, 1893. All part of the record in the State Department.

So what we have there from 1893 is a situation of a governmental matter, not a state or a sovereignty.

As we move forward into 1898 there still is no treaty, but the Spanish American War breaks out and that's in April of 1898. The United States is waging war against the Spanish, not just in Puerto Rico and Cuba in the Caribbean, but also in Guam and the Phillipines.

And Captain Alfred Mahan from the U.S. Naval War College and General Schoffield gave testimony to the House Committee on Foreign Affairs in May 1898, that they should pass a law, called a joint resolution, to annex the Hawaiian Islands because of necessity called war. They need to seize Hawaii, as stated by those given testimony, in order to protect the west coast of the United States

and to reinforce troops in Guam and the Phillipines.

The problem we run into is a joint resolution of Congress has no effect beyond the borders of the United States. It's a municipal legislation. It's not international law.

That was then taken up for a vote in the house. Congressmen were making points on the record that this is illegal. You can not pass laws that can effect the sovereignty of another country. But the argument was it's necessity. We're at war.

On July 7th, after the House and Senate made the record, but was not able to get -- what they did was they passed by majority, July 6th, 1898, joint resolution of annexation and then it was President McKinley on June -- July 7th, 1898 that signed it into law.

It was that U.S. law that was used to seize another country in the occupation. And the occupation of Hawaii began formally on August 12th, 1898. Formal ceremonies at Iolani Palace where the Hawaiian flag was lowered and the American flag risen before a full regalia of U.S. military in formation.

What has happened since then is that now research is showing that there was a deliberate move to basically denationalize the inhabitants in the public schools that actually began formally in 1906 where they

began to teach within the schools American history. You can not speak Hawaiian. And if you do speak Hawaiian and not English, you get disciplined. We hear those stories from our kupuna.

And that began what we call in international law, attempts to denationalize the inhabitants of occupied territories. Which since World War I and World War II has been categorized as a war crime.

So what we have today is we have in 1900, after 1898, in 1900 the United States Congress passed another law called the Organic Act creating a government for the Territory of Hawaii.

In that Organic Act it specifically says that the Republic of Hawaii, which was called the provisional government which President Cleveland called self-declared, is now going to be called the Territory of Hawaii.

And then in 1959 the Statehood Act basically stated that what was formerly the Territory of Hawaii is the State of Hawaii.

Now, looking at the limitation of U.S. law it has no effect in a foreign state. You still need a treaty.

But what's interesting is in 1993 the United States Congress passed a law apologizing for the illegal overthrow of the Hawaiian Kingdom government. What was

important in there is that in one of the whereases it stated specifically, that whereas the self-declared Republic of Hawaii ceded sovereignty to the United States.

We have a problem there because self-declared means you're not a government. Which is precisely what President Cleveland, in his investigation, called its predecessor the provisional government.

So in that genealogy, if the provisional government was self-declared, then the Republic of Hawaii is self-declared, then the Territory of Hawaii was self-declared, then the State of Hawaii self-declared.

Now, I fully understand the ramifications of this information and history and the applicable law. I'm a retired captain from the Army, you know. So this is not a political statement. But it's part of my research that clearly shows that I can not find how the State of Hawaii, a court, could have subject matter jurisdiction on two points.

First, U.S. law is the Statehood Act is limited to U.S. territory. Second, the State of Hawaii is a successor of the Republic of Hawaii, which was admitted to be self-declared in 1993 by the U.S. Congress.

So that's -- that's why I've come to the conclusion where there is what is called a presumption of continuity of the Hawaiian Kingdom as a state, not as a

government, but as a state under international law.

Q. Can you expand on that, the presumption of continuity just a little bit, so that the Court understands that or I can understand better what continuity means in the context of international law?

A. Well, the word presumption is a conclusion based upon facts. Assumption is a conclusion based upon no facts.

But what is more important about the presumption is that it shifts the burden. So no different than there is a presumption of innocence because of the fact the person has rights. You have, under international law, a presumption of continuity, because the state itself has rights under international law.

So the presumption of continuity is a very well recognized principle of international law. That's what preserves the State's continuity despite the fact that its government was overthrown.

Now, there are two legal facts that need to be established on the presumption of continuity of an independent state. The first legal fact has to be that the entity in question existed at some point in time in history as an independent state. That's the first thing.

Now, clearly Hawaii's history shows that it was an independent state, but what's more important there

was dictum in an arbitration award out of the permanent Court of Arbitration in 2001 published in international law reports out of Cambridge. Which basically says paragraph 7.4, that in the 19th century the Hawaiian Kingdom existed as an independent state, recognized as such by the United States of America, Great Britain and various other states. That right there, that dictum verified and accomplished that first rule. Hawaii was an independent state.

The second legal fact that would have to apply, now that the United States which has the burden to prove is that there are intervening events that have deprived that state of its independence under international law.

What we have as far as the historical record from the United States of America is that all it has, as a claim to Hawaii, it's not a treaty, but a joint resolution of annexation, which is a U.S. law limited to U.S. territory not recognized by international law. And that the Statehood Act of 1959 is still a U.S. law not recognized by international law.

So there are no intervening facts that would deprive or rebut the presumption of continuity.

In fact, in 1988 the Office of Legal Counsel, Department of Justice, in a legal opinion looked into that

very issue and it stated regarding the joint resolution, it is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Therefore, this is not a proper precedent for the United States president to follow.

And they made reference to the Congressional records of Congressmen and Senators who was saying U.S. laws have no effect beyond our borders. We can not annex a foreign country by passing a joint resolution.

So in 1988 the Office of Legal Counsel, Department of Justice, stumbled over that. Therefore, there are no clear evidence that can rebut the presumption of continuity. And that's why my research and my expertise is in that area that the Hawaiian state continues to exist under international law.

Q. Thank you, Dr. Sai.

MR. KAIAMA: I just wanted to let you know, and for the record, the executive agreements that you refer to between Queen Liliuokalani and President Grover Cleveland has been attached to my client's motion to dismiss as Exhibit 7 and 8, your Honor. So those are the diplomatic records and negotiations, communications between President Grover Cleveland when he comes to that conclusion based on his investigation.

BY MR. KAIAMA:

Q. Dr. Sai, I also wanted you to confirm, I know you spoke earlier and you testified that the joint resolution, the Territorial Act, as well as the Statehood Act was of Congressional Legislation, which has no force and effect beyond its own territory or borders.

And you're referring to U.S. law. And I can speak to that. But it's also true that that same rule of law applies in the international realm as well; right? So no country can occupy other countries by way of joint resolution. That's a -- that's a common -- well, a well established understanding under international as well; is that correct?

A. International law is able to distinguish what is international law and what is national law. So national law's applied to states as an exercise of their sovereignty.

International law is a law between states. And between states is based upon agreements. And those agreements are evidenced by treaties.

Q. Based on your conclusion that the continuity of the Hawaiian Kingdom still exists, Dr. Sai, what are the consequences of that -- of your opinion, your expert opinion about that? Especially particularly with respect to, respectfully, the Court's exercise of jurisdiction in this case?

A. When we're looking at this issue within the framework of international law what resonates is, number one, sovereignty is still intact and it remains with the state under occupation. Okay.

Now, that because sovereignty is still intact and it's not a part of the United States, then international law regulates that phenomenon or that situation. And that is what we call the law of occupation. And that's called the Hague Conventions of 1899, which was amended in 1907. And then we also have the Geneva Conventions of 1949.

Now, specific issues regarding occupations are pretty much the substance of Hague Conventions Number Four of 1907, as well as Geneva Conventions Number Four that deals with the civilian population during occupations.

After World War I -- well, toward the end of World War I is when war crimes began to be brought up as a possible issue to be addressed with the Germans and the access powers.

And they came up with a list of war crimes. And one of those war crimes in 1919 was put out by the United Nations Commission. Now, United Nations, back then, I'm not talking about 1945 United Nations, but they called like the United Front.

Attempts to denationalize inhabitants of an occupied state, failure to provide a fair trial, those issues, although they were not successful in prosecution of individuals for war crimes after World War I because there was still that issue of state immunity that people were acting on behalf of the state, so they're not personally liable or criminally liable. The State still carried that.

Once World War II took place, it became a foregone conclusion that individuals will be prosecuted for war crimes.

There is a similar history that Hawaii has with regard to war crimes in a country called Luxembourg. In 1914 the Germans occupied Luxembourg, which was a neutral country, in order to fight the French. The seizure of Luxembourg under international law was not a justified war, but it was called a war of aggression. That led to war crimes being committed. So from 1914 to 1918 Germany occupied Luxembourg even when Luxembourg did not resist the occupation.

They also did that same occupation in 1940 to 1945. Now 1940 to 1945 they began to attempt to denationalize Luxembourgers into teaching the children that they're German. They began to address the schools, the curriculum.

What was also happening, not just in Luxembourg, as a war crime was unfair trials. Germany began to impose their laws and their courts within occupied territories. And that became the subject of war crime prosecutions by the allied states, but a prominant tribunal that did prosecute war crimes for unfair trial and denationalization was the Nuremberg trials.

And that set the stage, after the Nuremberg trials, to address those loopholes in the conventional -- the Hague Conventions of 1907 which prompted the Geneva Conventions in 1949.

And the Geneva Conventions specifically stated as the experience -- as they acquired the experience from World War II, Article 147, unfair trial is a grave breach, which is considered a war crime.

So that's where the issue of not providing a fair trial is a war crime according to the Geneva Conventions and customary international law.

Q. Is it true, Dr. Sai, that the United States is a party to that Geneva Conventions?

A. Yes.

Q. So it is obligated under the terms of Geneva Conventions?

A. The United States acknowledges customary international law and the law of occupation during the

Spanish American War, as evidenced by their written manuals to the military. In administration of justice within occupied territories came to be known as General Order Number 101. Okay. Direction of the president on how to administer the laws of former Spanish territory until a peace treaty is signed where they can acquire the territory themselves.

And they're also a party to the 1899 Hague Conventions, the 1907 Hague Conventions, and the 1949 Geneva conventions.

Q. As part of their obligation as a contracting party to those conventions, including 1949 Geneva Conventions, did the United States create domestic legislation that covered the commission of war crimes, including deprivation of a fair and regular trial?

A. That would be in 1996 called the War Crimes Act, which is Title 18, Section 2441, United States Code.

Q. Okay. You know, Dr. Sai, you answered all my questions. Thank you. I appreciate it.

Is there -- I'll be honest, I think I covered everything I need to cover, but I'm not sure. I'm not the expert. Is there any other area that you would like to provide us some insight that we don't have about the status of Hawaii or about perhaps subject matter jurisdiction?

A. I think there's a particular important case here regarding subject matter jurisdiction. That dealt with Guantanamo Bay, Gitmo. And this is a case that went before the United States Supreme Court, Hamdan versus Rumsfeld. Okay.

And basically the argument that was presented by a JAG as a Public Defender was that the military tribunals were not properly constituted which was a direct violation of the Geneva Conventions. Therefore, his client could not get a fair trial.

Now, these military tribunals were determined by the United States Supreme Court to be illegal because the United States president can not establish -- can not establish military tribunals within U.S. territory because that would undermine the authority of Congress which has plenary power.

Guantanamo Bay was not foreign territory where the president could create military tribunals. It was actually part of the United States.

Now, the United States President does have the authority under Article 2 to create military tribunals in occupied territories. He did that in Japan after World War II. In Germany after World War II, as well as after World War I.

And these military tribunals administer the

laws of the occupied state. What was brought up in this case with Hamdan versus Rumsfeld, the president could not create a military tribunal within U.S. territory and it was not justified by necessity.

So the Court ruled that the Court's are illegal and then turned over to Congress to pass a law, because it's within U.S. territory, to keep it up.

Now, what's important is there was a Justice Robertson, I believe, of the Supreme Court. He was addressing the secondary argument that people were not getting a fair trial within these military tribunals. And Justice Robertson, if I'm not mistaken his name, he stated it is irrelevant whether or not they were given a fair trial, because if they're not properly constituted, they can't give a fair trial.

Q. Okay. And so is it fair to say, is it your -- I think I understood this, but I just want to be clear. The Hamdan case also stands for the president does not have authority in U.S. territory, then he is the one that has authority in foreign territory?

A. And these courts called military tribunals are also referred to as Article 2 courts.

Q. Okay. And is that your opinion with respect to Hawaii, those are the courts that should be administering the laws of the Hawaiian Kingdom?

A. Yes.

Q. Okay. Thank you. And just to give you a quick correction. It was actually Justice Kennedy who said that.

A. Kennedy. My apologies.

Q. No. Thank you, Dr. Sai. Is there anything else that you'd like to add?

I'd actually like to ask you about how we resolve the situation, but I think that would be something for --

A. I can quickly state to that because this information is quite perplexing. All right.

My committee members on my doctorate committee could not refute the evidence. All they asked is how do you fix the problem? So Chapter Five of my dissertation is how do you begin the transition in this process.

And actually the transition is quite simple. I think this issue is not hard to understand. It's just hard to believe. I mean to understanding, and once you understand, things can take place.

So what we have to ensure for myself as a professional, I am not an anarchist. I'm a person to maintain civility. I still am inherently a retired captain.

There is a way to fix this problem, yeah. And that is clear, but the rule of law has to apply. But there is a doctrine called necessity under international law that can resolve over a hundred years of noncompliance to the law. And that's what I cover in Chapter Five. But that's another issue.

Q. And perhaps one of the first places we can start is with the proper courts administering the proper law; is that correct?

A. It's really just the court administering the proper law so that people have a fair trial.

MR. KAIAMA: Thank you, Dr. Sai. I have no further questions.

THE COURT: Any cross-examination?

MR. PHELPS: Your Honor, the State has no questions of Dr. Sai. Thank you for his testimony. One Army officer to another, I appreciate your testimony.

THE WITNESS: 13 echo.

THE COURT: Thank you. You are excused.

Mr. Kaiama.

MR. KAIAMA: Thank you, your Honor. And I will try to be brief.

As you can see, your Honor, we did file the motion to dismiss for lack of subject matter jurisdiction and I also did file a supplemental memorandum.

In the motion in the supplemental memorandums I did provide exhibits. And the exhibits include Dr. Sai's curriculum vitae, and expert opinion briefs that he's written concerning much of what he's testified today.

Essentially our argument is this, your Honor. That with the exhibits that's been presented and the testimony of Dr. Sai, we now have met the requirements set forth under State of Hawaii versus Lorenzo.

We have provided the courts now with a factual and legal basis to conclude that the Hawaiian Kingdom continues to exist. Because we've met that burden under Lorenzo, we respectfully submit that the State has failed to meet its burden that this Court has jurisdiction under Nishitani versus Baker.

And given that we've met our burden and the State, respectfully, has not met theirs, our position simply, your Honor, is that the Court has no other alternative but to dismiss the case for lack of subject matter jurisdiction.

In the motion itself we did provide the Court with additional arguments. We did present the Court with the legal arguments as to the limits of Congressional enactments, and we've provided both Supreme Court cases. Curtiss-Wright versus United States Export (sic). I may have said that wrong. But talking about the limits, and

basically confirming that the joint resolution which attempted to annex the United States is not lawful and has no force and effect on Hawaiian territory.

And because of that, neither the Organic Act which formed the territory, or the Statehood Act which are both Congressional legislations, also have no force and effect on Hawaiian territory.

That being the case, your Honor, the United States never lawfully acquired a sovereignty over the Hawaiian territory.

In addition with Dr. Sai's testimony, his expert testimony, we've proven or clearly established that the Hawaiian Kingdom, in fact, was recognized as an independent nation as of 1843 and concluded a number of treaties. I believe over 90 treaties -- 46 treaties, a little over 90 countries, to further affirm its position as an independent nation.

With Dr. Sai's testimony, again once independence is established, it is the burden in this case of the United States or the State of Hawaii to prove that that continuity has been extinguished.

There is no evidence, and in all honesty, your Honor, in the four years that I've been arguing this motion there has not been any evidence to rebut the presumption of that continuity.

Finally, your Honor, I think it is important, and I do say this in all respect, that because of the evidence provided in this situation that the Court not only should be -- the Court should be dismissing the case for lack of subject matter jurisdiction, but also the argument is that, respectfully, the Court is not lawfully constituted under Hamsden -- Hamden versus Rumsfeld, because it is not administering the laws of the Hawaiian Kingdom.

Because we continue to be under a state of occupation, the rule of law which applies is the law of occupation. And the United States, in this case, presently as the occupier, should be administering Hawaiian Kingdom law.

By virtue of the fact that the prosecutor's office and the State has brought this case and sought to confer jurisdiction on the Court by Hawaii Revised Statutes, that the Court's retention of jurisdiction, with all respect, in light of the evidence that's been provided would, in fact, deprive my clients of a fair and regular trial, and would be a violation of the Geneva, the Hague, and other conventions that has been testified to by Dr. Sai.

Again, with all respect, your Honor, we think we've met our burden. We do not believe, in fact we are

certain, that the State has not met its burden to prove that this Court has jurisdiction.

And we would respectfully request -- I would respectfully request on behalf of my clients, Kaiula English and Mr. Robin Dudoit, that the Court dismiss their cases for lack of subject matter jurisdiction. Thank you, your Honor.

THE COURT: Mr. Phelps.

MR. PHELPS: Your Honor, the State will be brief.

We're going to ask that obviously you deny the defense motion to dismiss for lack of subject matter jurisdiction. We're going to submit on the memorandum that we submitted in opposition to it.

But the State will simply point out, we appreciate Dr. Sai's testimony. It was one of more impressive dissertations I've heard in awhile. And I do respect some of the points he's made.

But the case law is fairly clear on this, your Honor. This isn't a new argument. This isn't a novel argument. Courts have ruled that basically regardless of the legality of the overthrow of the Hawaiian Kingdom, Hawaii, as it is now, is a lawful, lawful state with a lawful court system and a lawful set of laws.

That anybody who avails themselves of this jurisdiction, they fall under the law, whether they want to claim to be a member of a sovereign kingdom or not, the law applies, your Honor. And for those reasons, we feel that you have no other choice but to deny this motion, your Honor.

I believe that the case law on this is fairly clear as laid out in our memorandum. All due respect to Mr. Kaiama and everybody who's here, we believe the courts have spoken, and we're simply going to ask that you take judicial recognition of the U.S. Constitution, the Hawaii Constitution, the Hawaii Revised Statutes, every law that basically this Court is mandated to follow, and deny his motion -- motions, actually.

THE COURT: Thank you.

MR. PHELPS: Thank you, your Honor.

MR. KAIAMA: Yes, your Honor. Briefly in response.

I know that the cases that the prosecutor relies on, your Honor, as a point of order, all of those cases in those decisions deal with personal immunity and personal jurisdiction.

So the question of subject matter jurisdiction has not been raised before this Court or before the appellate courts or nor has it been addressed.

I can tell you, your Honor, that I believe in 2012 I did take two cases up on appeal, bringing the same question before the Court and presenting the same legal analysis.

The ICA did not address the legal analysis in this case, and I don't know why. I might say they refused to address it, and, in fact, in both cases issued just a two page summary disposition order, really relying on the Kauwila case -- Kaulia case, excuse me. And the entirety of the Court's analysis or the holding in that is essentially what the prosecutor said. Is that despite or regardless of lawfulness of its orgins, this is the proper State of Hawaii.

Your Honor, I'm asking that this Court transcend that, and actually look into the analysis, and based on the analysis realize that what we're asking is the predicate question. Did the United States ever establish lawful acquisition of sovereignty here? And if they did not, then none of this legislative enactments can have any bearing on this Court.

And, essentially, Dr. Sai and the evidence that we provided has proved that. There is no dispute that the claim for statehood here of Hawaii is by way of a joint resolution. That's not undisputed. That's part of Congressional records.

It's also clear, based on the law, both the Supreme Court, by testimony by representatives and Congressmen in Congress at the time of 1898, and the testimony of the Attorney General in 1998 as well, I believe it was Douglas Kmiec, all call into question -- in fact, they don't call into question, basically affirm the fact that the Congress has no legislative powers beyond its own borders.

So what I'm asking the Court, your Honor, at this time, is that under its own law, Lorenzo is still the prevailing case.

So it still requires us to present that evidence for the Court to conclude relevant factual and legal evidence for the Court to conclude that the Hawaiian Kingdom continues to exist.

We've done that now. So we're presenting the Court with that analysis it hasn't had before, and we're asking the Court to transcend the lack of -- and I don't know how to say it, but I wish to say, respectfully, the lack of courage on the part of the Intermediate Courts of Appeals to actually address it and to address the legal analysis.

We're asking this Court to take a look at that and, again, once the Court is required or takes a look at that analysis, we assert and we firmly believe

that there is no other course but that my clients should prevail. Thank you, your Honor.

THE COURT: All right. Well, before the Court today is defendant English's motion to dismiss a criminal complaint pursuant to Hawaii Rules of Penal Procedure 12(1)(b) and the joinder that was filed by Mr. Dudoit joining in Mr. English's motion.

And as has been outlined by Mr. Kaiama, essentially the argument here, is that this Court lacks subject matter jurisdiction. As has also been pointed out by Mr. Kaiama in his remarks to the Court, he has brought this issue to our appellate courts in the past and has not achieved the result that he has sought through those arguments.

And, of course, as I'm sure everyone would acknowledge, this Court is a trial court and is subject to the rulings of our appellate courts. And what our appellate court has said, as has been acknowledged in Mr. Kaiama's arguments, has in (inaudible) stated that individuals claiming to be citizens of the Kingdom of Hawaii and not the State of Hawaii are not exempt from application of the laws of the State of Hawaii.

And Mr. Kaiama has argued on behalf of Mr. English and Mr. Dudoit that he's not of the view that the Court has -- the appellate courts have addressed the issue

that they wish to have addressed.

But, at any rate, these identical issues having been presented in the past, and the Court having ruled, and the appellate courts having ruled in a certain fashion, in the Court's view, at least for purposes of a trial court, resolves the question presented by the motion and joinder.

And, respectfully, the Court is of the view that based on everything that's been presented, that the Court does have subject matter jurisdiction and will -- will ask the question though. And that is that in your pleadings, although it was not discussed today, you asked the Court to take judicial notice of various documents, but you never said anything about it today.

MR. KAIAMA: Actually, your Honor, I would ask -- and thank you -- I would ask, because we did make the request and it's provided for in the motion itself, as well as the authorities, that the Court take judicial notice of the matters that were presented in the motion itself.

And that being, and a number of those are actually treaties between the Hawaiian Kingdom and United States, and they are part of the Congressional records to begin with.

And I think it's fairly clear from the law

that these kinds of treaties, there is a -- an obligation to take judicial notice of those treaties. That essentially was most of the request.

Now, we did also ask that the Court take -- request judicial notice of the Hague Conventions of 1907, the Geneva Conventions of 1949. Again, those are treaties that the United States is a contracting party to and it is part of U.S. law and part of Congressional records there. And --

THE COURT: Well, it -- I'm sorry, I thought you were finished.

MR. KAIAMA: Yeah. And, finally, the other parts that we did ask was that the Court take notice of the agreement -- assignment agreement with Liliuokalani and Grover Cleveland, as well as the restoration agreement between the the United States President and the Queen. Again, those are part of the Congressional records.

And, finally, we did ask the Court to take judicial notice of particular court rulings, that being Larsen versus the Hawaiian Kingdom, and that is part of the international law reports, and that's stated there. As well as the U.S. Supreme Court decisions in U.S. versus Belmont, U.S. versus Curtiss-Wright Export Corp, and State of Hawaii, which is -- State of Hawaii versus Lorenzo, which is the prevailing law in Hawaii.

Finally, I did ask the Court to take judicial notice of Dr. Sai's expert memorandum, which was attached as an exhibit. I still make that request, although I am aware that the courts have not necessarily granted the request, but I would still make the request on behalf of Mr. English and Mr. Dudoit.

THE COURT: The matters that you've requested by way of your written presentation to the Court are set forth in page 12 of the memorandum; correct?

MR. KAIAMA: Let me just double -- yes, I believe that is correct. That is on pages -- yes, page 12. Yes, page 12 of the memorandum.

THE COURT: Yeah, okay. What's the prosecution's position?

MR. PHELPS: No objection, your Honor.

THE COURT: All right. The Court will take -- there being no objection, the Court will take judicial notice as requested in writing on the documents and the matters requested on the last paragraph of page 12 of the memorandum in support of motion filed on February 6th, 2015.

And having considered all of that, the Court at this time is going to deny the motion and joinder to dismiss the criminal complaint in these cases.

And I'll ask Mr. Phelps to prepare the

appropriate order.

And thank all of you, your report and presentation today.

MR. KAIAMA: Thank you, your Honor.

MR. PHELPS: Thank you, your Honor.

THE CLERK: All rise, court stands in recess.

THE COURT: You know, actually we were -- yesterday during a pretrial, we were talking about the trial date.

MR. KAIAMA: Yes.

THE COURT: And --

MR. KAIAMA: My clients did sign the waiver.

THE COURT: You've done that already?

MR. KAIAMA: Yes.

THE COURT: Okay. Thank you.

(At which time the above-entitled proceedings were concluded.)

C E R T I F I C A T E

I, BETH KELLY, a Court Reporter do hereby certify that the foregoing pages 1 through 46 inclusive comprise a full, true and correct transcript of the proceedings had in connection with the above-entitled cause.

Dated this 20th day of March, 2015.

_____
BETH KELLY, RPR, CSR #235
Court Reporter

1

1 11:8, 46:8
101 29:4
111 2:5
12 44:9, 44:12, 44:12, 44:19
12(1)(b 1:18, 1:20, 4:7, 4:9, 41:6
12th 19:18
13 33:18
14-1-0819 1:4, 4:3
14-1-0820 1:9, 4:4
147 28:14
17th 16:8
18 29:17
1803 17:22
1843 14:23, 15:24, 35:14
1844 14:25, 15:24
1848 17:25
1864 15:11
1893 15:8, 15:12, 15:18, 16:8, 16:23, 17:14, 18:2, 18:4, 18:9, 18:11
1898 18:14, 18:16, 18:21, 19:13, 19:15, 19:18, 20:10, 40:3
1899 16:22, 17:8, 26:10, 29:8
18th 8:1, 18:9
1900 20:9, 20:10
1906 19:25
1907 26:10, 26:14, 28:10, 29:9, 43:5
1914 27:14, 27:18
1918 27:19
1919 26:22
1940 27:21, 27:22
1945 26:24, 27:22, 27:22
1949 17:9, 17:11, 26:11, 28:11, 29:9, 29:12, 43:6
1959 20:17, 23:20
1982 6:23
1987 6:25
1988 23:24, 24:10
1993 20:23, 21:22
1996 29:16
1998 40:4
19th 7:5, 23:4

2

2 30:21, 31:22
2001 23:2
2003 16:13
2004 7:2
2008 7:6, 9:1
2012 39:2
2015 1:16, 4:1, 44:21, 46:13
20th 46:13
235 1:24, 46:15
2441 29:17
28th 14:23

3

30 8:13

4

4 9:5
46 35:15, 46:8

5

5 1:16, 4:1

6

6 3:3
6th 14:25, 19:13, 44:21

7

7 24:21
7.4 23:4
7th 19:11, 19:15

8

8 24:21

9

90 15:13, 35:15, 35:16

A

A1607 2:5
ability 16:7
able 9:2, 10:6, 19:12, 25:13
above-entitled 45:16, 46:10
academic 10:14
academy 7:15
access 26:20
accomplished 23:8
according 28:17
achieved 41:13
acknowledge 41:16
acknowledged 41:18
acknowledges 28:24
acquire 17:18, 29:6
acquired 17:22, 17:24, 24:3, 28:13, 35:9
acquisition 39:18
across 12:19
Act 20:11, 20:13, 20:17, 21:19, 23:20, 25:3, 25:4, 29:17, 35:4, 35:5
acting 27:6
actions 16:24
add 32:7
addition 12:6, 35:11
additional 34:21
address 27:24, 28:9, 39:5, 39:7, 40:21, 40:21
addressed 26:19, 38:25, 41:25, 42:1
addressing 31:10
administer 16:20, 17:4, 29:5, 30:25
administering 31:25, 33:8, 33:10, 36:8, 36:13
administration 29:2
admitted 15:6, 21:21
adopted 15:10
Affairs 18:21
affirm 35:16, 40:6
against 10:5, 18:17
age 12:24
aggression 27:17
agreement 18:8, 43:14, 43:14, 43:15
agreements 24:18, 25:18, 25:19
Alfred 18:19
all-but-disserta 8:19
allied 28:5
allowed 13:16
already 7:23, 45:13
alternative 18:6, 34:18
although 27:3, 42:12, 44:3
amended 26:10
America 17:25, 23:6, 23:16
American 18:15, 19:20, 20:1, 29:1
analysis 39:4, 39:5, 39:10, 39:15, 39:16, 40:17, 40:22, 40:25
anarchist 32:23
annex 18:22, 24:8, 35:2
annexation 19:14, 23:18
answered 29:18
apologies 32:5
apologizing 20:24
appeal 39:2
Appeals 40:21
APPEARANCES 2:1
appearing 4:11
appellate 38:25, 41:12, 41:17, 41:18, 41:25, 42:4
applicable 21:13
application 41:22
applied 25:15
applies 15:4, 25:8, 36:11, 38:4
apply 23:11, 33:2
appreciate 29:19, 33:17, 37:16
appropriate 45:1
April 12:14, 18:16
arbitration 23:1, 23:2
area's 7:17
argued 10:18, 41:23
arguing 10:4, 35:23
argument 5:4, 5:11, 5:15, 10:19, 19:9, 30:6, 31:10, 34:5, 36:6, 37:20, 37:21, 41:9
arguments 34:21, 34:22, 41:14, 41:19
Army 21:14, 33:17
Article 28:14, 30:21, 31:22
articles 10:24, 11:1
asking 39:14, 39:16, 40:9, 40:18, 40:23
assert 40:25
assignment 43:14
Associates 6:23
Assumption 22:7
attached 24:20, 44:2
attempt 18:3, 27:22
attempted 35:2
attempts 20:6, 27:1
Attorney 2:2, 2:2, 2:4, 40:4
August 19:18
authorities 42:18
authority 16:1, 30:15, 30:21, 31:19, 31:20
avails 38:1
average 8:13
Avi 9:12
award 23:1
awarded 10:6
awhile 37:17

B

Bachelor's 6:24
background 6:20, 6:20, 9:6, 9:13, 9:17, 9:21, 12:10, 14:5
Baker 34:14
basically 7:21, 19:24, 20:17, 23:3, 30:6, 35:1, 37:21, 38:13, 40:6
Bay 30:3, 30:17
bearing 39:20
became 27:9, 28:4
becomes 10:7
begin 7:18, 8:19, 32:16, 42:24
beginning 8:22
begins 11:20
behalf 4:11, 4:13, 5:23, 14:6, 27:6, 37:4, 41:23, 44:5
behavior 9:6
Belmont 43:23
besides 11:11
Beth 1:24, 46:7, 46:15
better 22:4
beyond 19:3, 24:8, 25:5, 40:7
bit 7:7, 12:10, 22:3
borders 19:3, 24:8, 25:5, 40:8
Boston 12:2, 12:16
boundary 16:4
breach 28:15
break 10:5, 10:6, 10:13
breaks 18:15
brief 33:22, 37:10
Briefly 38:17
briefs 34:3
bringing 5:3, 5:4, 14:6, 39:2
brings 11:20
Britain 14:23, 23:6
brought 26:18, 31:1, 36:16, 41:11
burden 22:10, 23:11, 34:11, 34:13, 34:15, 35:19, 36:25, 37:1

C

Calhoun 15:1
calling 4:2, 5:18
Cambridge 12:22, 23:3
can't 13:14, 31:15
captain 18:19, 21:14, 32:25
CARDOZA 1:15
Caribbean 18:18
carried 27:8
case 4:23, 6:15, 7:12, 8:8, 10:8, 13:12, 13:14, 13:16, 14:18, 25:25, 30:1, 30:3, 31:2, 31:18, 34:18, 35:8, 35:19, 36:4, 36:12, 36:16, 37:19, 38:7, 39:6, 39:9, 39:9, 40:11
cases 34:23, 37:6, 38:19, 38:21, 39:2, 39:7, 44:24
categorized 20:8
cause 46:11
ceded 21:3
centralized 16:5
century 7:5, 8:1, 23:4
ceremonies 19:19
certain 37:1, 42:4
certify 46:8
chairman 9:4
challenge 10:13
Challenges 11:3
Channel 9:5
Chapter 32:15, 33:5
Chiefs 9:21
choice 38:5
Circuit 1:1, 1:1, 1:15
citizens 41:20
civilian 26:15
civility 32:24
claim 23:17, 38:3, 39:23
claiming 41:20
clear 10:2, 10:8, 17:14, 17:15, 24:12, 31:18, 33:2, 37:19, 38:8, 40:1, 42:25
clearly 15:18, 21:16, 22:24, 35:12
CLERK 4:2, 5:20, 6:1, 45:6
Cleveland 18:3, 20:15, 21:6, 24:20, 24:23, 43:15
client 30:10
client's 24:20
clients 14:6, 36:20, 37:4, 41:1, 45:12
coast 18:25
Code 29:17
codified 17:10, 17:11
college 6:13, 6:24, 11:17, 11:24, 18:20
colleges 11:24, 12:20
comes 24:23
commission 26:23, 29:14
committed 27:18
committee 7:20, 7:20, 8:25, 9:3, 9:24, 10:5, 10:10, 18:21, 32:13, 32:14
common 25:10
communications 24:22
community 6:13, 11:24
complaint 1:20, 4:9, 41:5, 44:24
complaints 1:17, 4:6
complete 8:14
completed 8:17
comprehension 8:9
comprehensive 8:6, 8:7, 8:18
comprise 46:9
concerning 10:16, 13:17, 13:21, 34:4
conclude 34:10, 40:13, 40:14
concluded 16:9, 35:14, 45:17
conclusion 10:15, 21:24, 22:6, 22:7, 24:24, 25:20, 27:10
conclusions 14:12, 14:13
confer 36:17
conference 12:22, 12:23
conferences 12:14
confirm 25:1
confirming 35:1
conform 16:19
Congress 19:3, 20:10, 20:24, 21:22, 24:3, 30:15, 31:6, 40:3, 40:7
Congressional 24:6, 25:4, 34:22, 35:6, 39:25, 42:23, 43:8, 43:17
Congressmen 19:7, 24:7, 40:3
Connecticut 12:17
connection 46:10
conquest 17:19, 17:23
consequences 25:22
considered 28:15, 44:22
constituted 30:8, 31:14, 36:7
Constitution 38:11, 38:12
constitutional 9:13, 15:9, 24:2
consulates 15:13, 15:16, 15:17
context 22:5
continue 36:10
continues 24:15, 34:11, 40:15
continuity 8:22, 13:7, 21:25, 22:3, 22:5, 22:13, 22:15, 22:17, 22:20, 23:23, 24:13, 25:20, 35:21, 35:25
contracting 29:11, 43:7
contribute 7:16
conventional 28:9
conventions 17:9, 17:9, 17:10, 17:13, 26:9, 26:11, 26:13, 26:14, 28:10, 28:11, 28:12, 28:18, 28:20, 28:23, 29:9, 29:9, 29:10, 29:12, 29:13, 30:9, 36:22, 43:5, 43:6
Corp 43:23
correct 10:10, 13:3, 25:12, 33:9, 44:9, 44:11, 46:9
correction 32:3
couldn't 10:17
Counsel 4:16, 23:24, 24:10
countries 25:9, 35:16
County 2:3
courage 40:20
course 41:1, 41:15
court 1:1, 1:15, 1:25, 4:15, 4:24, 5:1, 5:16, 6:2, 13:24, 13:25, 14:14, 14:17, 21:17, 22:3, 23:2, 30:4, 30:12, 31:5, 31:9, 33:10, 33:14, 33:19, 34:13, 34:17, 34:20, 34:21, 34:23, 36:3, 36:4, 36:6, 36:17, 37:2, 37:5, 37:8, 37:24, 38:13, 38:15, 38:24, 39:3, 39:14, 39:20, 40:2, 40:9, 40:13, 40:14, 40:17, 40:18, 40:23, 40:24, 41:3, 41:4, 41:9, 41:11, 41:16, 41:16, 41:18, 41:25, 42:3, 42:6, 42:8, 42:10, 42:13, 42:18, 43:4, 43:10, 43:13, 43:18, 43:19, 43:22, 44:1, 44:7, 44:8, 44:13, 44:16, 44:16, 44:17, 44:22, 45:6, 45:7, 45:11, 45:13, 45:15, 46:7, 46:16
Court's 25:24, 31:5, 36:18, 39:10, 42:5
courts 28:3, 31:21, 31:22, 31:24, 33:8, 34:9, 37:21, 38:9, 38:25, 40:20, 41:12, 41:17, 41:25, 42:4, 44:4
cover 29:21, 33:5
covered 29:14, 29:20
Craven 9:16
create 29:13, 30:18, 30:21, 31:3
creating 20:11
Crim 1:4, 1:9
crime 20:8, 28:2, 28:5, 28:15, 28:17
crimes 26:18, 26:21, 26:22, 27:4, 27:11, 27:13, 27:18, 28:6, 29:14, 29:16
criminal 1:17, 1:19, 4:2, 4:4, 4:6, 4:8, 41:5, 44:24
criminally 27:7
CROSS 3:2
cross-examinatio 33:14
CSR 1:24, 46:15
Cuba 18:17
curriculum 11:9, 11:23, 27:25, 34:3
Curtiss-wright 34:24, 43:23
customary 16:24, 17:2, 17:10, 17:11, 28:18, 28:24

D

D.C 15:15
date 6:21, 45:9
Dated 46:13
David 5:22, 6:12
deal 38:21
deals 26:15
dealt 30:2
Dean 9:12, 10:9
December 18:9
decisions 38:21, 43:22
defend 10:3, 10:4
defendant 1:7, 1:12, 1:16, 1:18, 1:19, 4:5, 4:7, 4:8, 41:4
defendant's 4:18
Defendants 2:4, 5:23
defended 8:24
Defender 30:7
defense 7:19, 9:17, 9:22, 10:1, 10:13, 10:23, 37:12
defined 16:4
degree 6:23, 7:1, 7:11, 7:14
deliberate 19:23
denationalizatio 28:7
denationalize 19:24, 20:6, 27:1, 27:23
deny 10:17, 10:18, 37:11, 38:5, 38:13, 44:23
Department 9:23, 12:23, 18:10, 23:25, 24:11
dependence 15:3
deprivation 29:15
deprive 23:23, 36:20
deprived 23:13
Deputy 2:2
despite 22:17, 39:11
determine 15:3
determined 30:11
Dexter 2:4, 4:12
dictum 23:1, 23:7
diploma 6:22
diplomatic 24:22
direct 3:2, 6:7, 30:8
Direction 29:4
discern 15:21
disciplined 20:3
discussed 42:12
dismiss 1:17, 1:19, 4:6, 4:8, 5:4, 13:21, 14:7, 24:21, 33:24, 34:18, 37:5, 37:12, 41:4, 44:24
dismissing 36:4
disposition 39:8
dispute 39:22
dissertation 8:20, 8:21, 10:1, 10:3, 10:4, 10:13, 10:16, 10:22, 11:18, 32:16
dissertations 37:17
distinguish 25:13
dividing 18:1
doctorate 8:21, 11:18, 32:13
doctrine 33:3
documents 42:13, 44:18
domestic 29:13
double 44:10
Douglas 40:5
Dr 3:3, 5:18, 5:22, 6:9, 6:14, 6:19, 7:8, 9:3, 9:25, 10:21, 11:7, 12:4, 12:6, 12:25, 13:9, 13:20, 14:4, 14:11, 24:16, 25:1, 25:21, 28:19, 29:18, 32:6, 33:12, 33:16, 34:2, 34:7, 35:11, 35:18, 36:22, 37:16, 39:21, 44:2

Dudoit 1:11, 4:5, 4:13, 4:14, 4:17, 5:3, 37:5, 41:7, 41:24, 44:6
Dudoit's 1:18, 4:7, 4:23
due 38:8
duly 5:24

E

ea 12:5
earlier 25:2
echo 33:18
education 10:25, 11:12, 12:3, 14:5
educational 6:20, 12:9, 13:1
educations 12:9
effect 19:3, 19:8, 20:21, 24:8, 25:5, 35:3, 35:7
embassies 15:13
embassy 15:14, 15:15
enactments 34:23, 39:19
Endures 12:5
English 1:6, 4:3, 4:13, 4:14, 4:16, 5:4, 20:3, 37:5, 41:24, 44:6
English's 1:17, 1:19, 4:5, 4:8, 41:4, 41:7
ensure 7:22, 10:2, 32:22
enter 16:7
entered 18:6
entirety 39:9
entity 22:22
equate 16:14
Especially 25:23
Esq 2:2, 2:4
essentially 5:1, 34:5, 39:11, 39:21, 41:9, 43:3
establish 30:13, 30:14, 39:18
established 22:20, 25:11, 35:12, 35:19
events 23:12
everybody 38:9
everyone 41:15
everything 29:21, 42:9
evidence 24:12, 32:14, 35:22, 35:24, 36:3, 36:19, 39:21, 40:13, 40:14
evidenced 25:19, 29:1
evidentiary 5:12
exact 5:3, 13:14
examination 6:3, 6:7
examined 5:24
example 17:21, 17:23
exams 8:6, 8:7, 8:18
excuse 6:5, 6:5, 39:9
excused 33:19
execute 4:25
executive 18:8, 24:18
exempt 41:21
exercise 25:15, 25:24
exercised 24:3
exercises 16:1
exhibit 11:8, 24:21, 44:3
exhibits 34:2, 34:2, 34:6
exist 24:15, 34:11, 40:15
existed 22:22, 23:5
exists 25:21
expand 14:16, 22:2
experience 28:13, 28:14
expert 5:13, 5:14, 13:10, 13:11, 13:15, 13:16, 13:20, 14:1, 25:22, 29:22, 34:3, 35:12, 44:2
expertise 13:2, 13:6, 13:17, 14:11, 24:14
explain 11:15, 14:16
explanation 14:17
Export 34:24, 43:23
extinguished 35:21

F

facilities 12:9, 12:9
facts 22:7, 22:8, 22:19, 23:22
factual 34:10, 40:13
fail 8:15
failed 34:13
failure 27:2
fair 27:2, 28:17, 29:15, 30:10, 31:11, 31:13, 31:15, 31:16, 33:11, 36:20
fairly 37:19, 38:7, 42:25
fall 38:2
Family 15:7
famous 9:5
fashion 42:5
February 44:20
feel 38:4
field 7:16, 7:17
fight 27:15
file 33:23, 33:25
filed 4:23, 41:6, 44:20
final 9:19
finally 36:1, 43:12, 43:18, 44:1
fine 6:18
finished 43:11
firmly 40:25
Five 32:15, 33:5
fix 32:15, 33:1
flag 19:19, 19:20
focusing 7:3, 12:23
follow 24:5, 38:13
follows 5:25
force 25:4, 35:3, 35:6
foregoing 46:8
foregone 27:10
foreign 18:21, 20:21, 24:9, 30:17, 31:20
Formal 19:18
formally 15:1, 19:18, 19:25
formation 19:21
formed 35:5
former 29:5
formerly 20:18
forth 34:8, 44:9
forward 18:14
framework 26:2
France 14:24
Francisco 11:2
Freitas 13:13
French 27:15
friendly 11:19
Front 26:25
full 19:20, 46:9
fully 15:10, 17:11, 21:12

G

gaps 17:12
gave 18:20
genealogy 21:8
General 18:20, 29:3, 40:4
Geneva 17:9, 26:11, 26:14, 28:10, 28:12, 28:17, 28:20, 28:22, 29:10, 29:12, 30:9, 36:21, 43:6
geopolitical 16:3
German 27:24
Germans 26:19, 27:14
Germany 27:19, 28:2, 30:23
Gitmo 30:3
given 8:14, 12:18, 18:24, 31:13, 34:15
giving 12:15
goes 9:9, 14:19
gone 15:8
government 15:8, 15:21, 15:23, 15:23, 15:25, 16:2, 16:5, 16:10, 16:13, 16:14, 16:20, 16:23, 17:15, 18:7, 20:11, 20:15, 20:25, 21:5, 21:7, 21:9, 22:1, 22:18
governmental 18:12
governments 16:25
graded 8:16
graduate 9:1
Grande 18:1
granted 44:4
grave 28:15
Greek 9:10
Grover 24:19, 24:23, 43:15
Guadalupe 17:25
Guam 18:18, 19:1
Guantanamo 30:3, 30:17
guess 10:24
guest 12:15, 12:21

H

Hague 17:8, 17:10, 17:13, 26:9, 26:13, 28:10, 29:8, 29:9, 36:21, 43:5
Hamdan 30:4, 31:2, 31:18
Hamden 36:7
Hamsden 36:7
happened 16:8, 19:22
happening 28:1
Harvard 12:16
hasn't 40:17
having 5:24, 42:3, 42:3, 42:4, 44:22
Hawaii 1:2, 1:4, 1:9, 2:3, 2:6, 4:3, 4:4, 6:13, 6:25, 11:4, 11:20, 11:24, 11:25, 12:19, 14:20, 14:22, 14:24, 15:6, 15:17, 15:18, 17:17, 18:24, 19:18, 20:12, 20:14, 20:16, 20:18, 20:19, 21:3, 21:9, 21:10, 21:11, 21:16, 21:20, 21:21, 23:8, 23:17, 24:3, 27:12, 29:24, 31:24, 34:8, 35:20, 36:17, 37:23, 38:11, 38:12, 39:13, 39:23, 41:5, 41:21, 41:21, 41:22, 43:24, 43:24, 43:25
Hawaii's 8:1, 22:24
Hawaiian 7:5, 8:3, 8:22, 9:20, 9:21, 9:23, 11:4, 11:6, 13:7, 15:2, 15:12, 15:15, 15:16, 16:10, 16:11, 18:7, 18:23, 19:19, 20:2, 20:2, 20:25, 21:25, 23:4, 24:14, 25:21, 31:25, 34:10, 35:3, 35:7, 35:10, 35:13, 36:8, 36:14, 37:23, 40:14, 42:22, 43:20
he's 9:4, 34:4, 34:4, 37:18, 41:24
hear 20:3
heard 37:17
hearing 5:13
HeinOnline 11:5
Hekili 2:5
hereby 46:7
Heyer 9:7
Hidalgo 17:25
higher 10:25, 12:9
highest 7:14
Hilo 13:12
historical 23:15
history 11:16, 11:20, 12:22, 20:1, 21:13, 22:23, 22:24, 27:12
Hobbes 9:10
holding 39:10
hole 10:19
honest 29:20
honesty 35:22
Honolulu 15:14
Honor 4:10, 4:12, 4:22, 5:6, 5:8, 5:10, 5:11, 6:4, 6:6, 13:19, 13:23, 14:2, 24:21, 33:15, 33:21, 33:23, 34:5, 34:17, 35:8, 35:23, 36:1, 36:24, 37:7, 37:9, 37:20, 38:4, 38:6, 38:16, 38:17, 38:20, 39:1, 39:14, 40:9, 41:2, 42:15, 44:15, 45:4, 45:5
Honorable 1:15
HRPP 1:18, 1:20, 4:6, 4:9
hundred 33:4

I

ICA 39:5
identical 16:3, 42:2
II 20:7, 27:9, 28:14, 30:23, 30:23
illegal 16:23, 19:8, 20:24, 30:12, 31:6
immunity 27:5, 38:21
imperialism 12:24
impose 17:5, 28:3
impressive 37:17
inaudible 41:19
include 34:2
includes 7:4
including 29:12, 29:15
inclusive 46:8
incorporating 8:2
independence 15:1, 15:4, 16:5, 17:7, 23:13, 35:19
independent 14:24, 15:5, 15:18, 22:21, 22:23, 22:25, 23:5, 23:9, 35:14, 35:17
INDEX 3:1
individuals 27:4, 27:10, 41:20
information 11:10, 21:13, 32:12
inhabitants 19:24, 20:6, 27:1
inherently 32:24
innocence 22:11
insight 29:23
Institute 6:24
intact 16:18, 17:7, 26:3, 26:5
interest 10:9
interesting 20:23
Intermediate 40:20
international 7:2, 7:3, 7:4, 7:13, 8:2, 8:3, 9:18, 13:8, 14:15, 15:4, 15:20, 15:22, 16:4, 16:7, 16:17, 16:18, 16:24, 17:10, 17:12, 17:18, 19:5, 20:5, 22:1, 22:5, 22:12, 22:14, 22:16, 23:2, 23:14, 23:19, 23:21, 24:15, 25:8, 25:11, 25:13, 25:14, 25:17, 26:2, 26:7, 27:16, 28:18, 28:25, 33:3, 43:21
intervening 23:12, 23:22
investigated 18:4
investigation 16:9, 16:10, 21:6, 24:24
invited 12:13, 12:21
Iolani 19:19
Iraq 16:15
Iraqi 16:13, 16:14
irrelevant 31:13
Islands 18:23
isn't 37:20, 37:20
issue 24:1, 26:1, 26:19, 27:5, 28:16, 32:19, 33:6, 41:12, 41:25
issued 39:7
issues 26:12, 27:3, 42:2
itself 15:9, 22:13, 34:20, 42:17, 42:20

J

JAG 30:7
January 16:8
Japan 30:22
John 9:9, 14:25
joinder 1:19, 4:8, 4:19, 4:23, 41:6, 42:7, 44:23
joining 41:7
joint 18:22, 19:2, 19:13, 23:17, 24:1, 24:3, 24:9, 25:2, 25:9, 35:1, 39:24
jointly 14:24
Jon 9:22
JOSEPH 1:15
Jounal 11:4
Journal 11:2
journals 10:25, 10:25
Judge 1:16, 13:12
judicial 9:6, 38:11, 42:13, 42:18, 43:2, 43:5, 43:19, 44:1, 44:18
July 14:25, 19:11, 19:13, 19:15
June 19:15
jurisdiction 14:8, 14:15, 14:18, 21:17, 25:24, 29:25, 30:2, 33:24, 34:13, 34:19, 36:5, 36:17, 36:18, 37:2, 37:6, 37:13, 38:2, 38:22, 38:24, 41:10, 42:10
justice 23:25, 24:11, 29:2, 31:8, 31:12, 32:3
justified 27:17, 31:4

K

Kaiama 2:4, 4:12, 4:13, 4:19, 4:21, 4:25, 5:9, 5:18, 6:4, 6:8, 13:19, 14:2, 14:3, 24:17, 24:25, 33:12, 33:20, 33:21, 38:9, 38:17, 41:8, 41:11, 41:23, 42:15, 43:12, 44:10, 45:4, 45:10, 45:12, 45:14
Kaiama's 41:19
Kailua 2:6
Kaiula 1:6, 4:3, 4:13, 37:4
Kalawe 1:6, 4:3
Kamehameha 6:23, 11:20
Kanalu 9:20
Katharina 9:7
Kaulia 39:9
Kauwila 39:9
kea 12:5
Keanu 5:18, 5:22, 6:12
Kelly 1:24, 46:7, 46:15
Kennedy 32:3, 32:5
kinds 12:10, 43:1
kingdom 7:5, 8:3, 8:22, 15:2, 15:12, 15:15, 20:25, 21:25, 23:5, 25:21, 31:25, 34:11, 35:13, 36:9, 36:14, 37:23, 38:3, 40:15, 41:20, 42:22, 43:20
Kmiec 40:5
known 29:3
kupuna 20:4

L

lack 14:7, 33:24, 34:18, 36:5, 37:6, 37:12, 40:18, 40:20
lacks 41:9
laid 38:8
Larsen 43:20
Later 17:9
law 7:4, 7:4, 7:4, 7:5, 7:17, 7:17, 8:3, 8:3, 8:4, 9:6, 9:8, 9:11, 9:13, 9:14, 9:18, 10:9, 11:1, 11:2, 11:3, 11:4, 13:8, 14:15, 15:4, 15:20, 15:22, 16:4, 16:17, 16:18, 16:24, 17:2, 17:11, 17:12, 17:19, 18:22, 19:5, 19:15, 19:16, 20:6, 20:11, 20:20, 20:24, 21:13, 21:19, 22:1, 22:5, 22:13, 22:14, 22:16, 23:3, 23:14, 23:18, 23:19, 23:20, 23:21, 24:15, 25:6, 25:8, 25:13, 25:14, 25:14, 25:17, 25:17, 26:2, 26:7, 26:8, 27:16, 28:18, 28:25, 28:25, 31:6, 33:2, 33:4, 33:5, 33:9, 33:11, 36:11, 36:11, 36:14, 37:19, 38:2, 38:4, 38:7, 38:12, 40:1, 40:10, 42:25, 43:8, 43:21, 43:25
law's 25:15
lawful 35:2, 37:23, 37:24, 37:24, 37:24, 39:18
lawfully 35:9, 36:6
lawfulness 39:12
laws 16:20, 17:2, 17:4, 17:5, 19:8, 24:8, 28:3, 29:5, 31:1, 31:25, 36:8, 37:25, 41:22
least 42:5
lecturer 6:12
lectures 12:15
led 27:18
legal 8:1, 11:5, 11:19, 14:23, 22:19, 22:21, 23:10, 23:24, 23:25, 24:10, 34:10, 34:22, 39:3, 39:5, 40:14, 40:21
legality 37:22
legislation 19:4, 25:4, 29:14
legislations 35:6
legislative 39:19, 40:7
lender 13:13
levels 11:17
liable 27:7, 27:7
Liliuokalani 24:19, 43:14
limitation 20:20
limited 21:20, 23:18
limits 34:22, 34:25
lit 7:24
literature 7:24
Lloyd 2:2, 4:10
London 9:16, 12:23
looking 14:20, 20:20, 26:1
loopholes 28:9
Lorenzo 34:8, 34:12, 40:10, 43:24
Louisanna 17:23
lowered 19:20
Luxembourg 27:13, 27:14, 27:16, 27:19, 27:19, 28:2
Luxembourgers 27:23

M

Mahan 18:19
maintain 17:3, 32:24
majority 19:13
making 18:1, 19:7
mandated 38:13
mandates 16:19
Manoa 11:25
manuals 29:2
March 1:16, 4:1, 18:4, 46:13
Massachusetts 12:2, 12:16
Master's 7:1, 7:11
material 11:13, 12:4
materials 13:1
matter 14:7, 14:14, 14:18, 18:12, 21:17, 29:24, 30:2, 33:24, 34:19, 36:5, 37:6, 37:12, 38:23, 41:10, 42:10
matters 4:11, 13:21, 42:19, 44:7, 44:19
Matthew 9:16
mau 12:5
Maui 2:3, 11:24
McKinley 19:14
means 15:23, 16:1, 21:5, 22:5
meet 34:13
member 9:15, 38:3
members 10:5, 32:13
memorandum 33:25, 37:13, 38:8, 44:2, 44:9, 44:12, 44:20
memorandums 34:1
merely 15:23, 17:10
met 34:7, 34:11, 34:15, 34:16, 36:25, 37:1
Mexican 17:25
Mexico 6:23
military 6:24, 6:24, 19:21, 29:2, 30:7, 30:11, 30:14, 30:18, 30:21, 30:25, 31:3, 31:11, 31:21
Milner 9:4
mistaken 31:12
monarchy 15:10
Monday 8:15, 8:15, 8:15
morning 4:10, 4:12, 4:15, 4:16, 4:16, 6:9
motion 1:17, 1:19, 4:6, 4:8, 4:18, 5:1, 5:4, 5:5, 5:11, 11:8, 13:21, 14:7, 24:20, 33:24, 34:1, 34:20, 35:24, 37:12, 38:5, 38:14, 41:4, 41:7, 42:6, 42:17, 42:19, 44:20, 44:23
motions 38:14
move 8:18, 18:14, 19:23
municipal 19:4
myself 32:22

N

nation 35:14, 35:17
national 25:14, 25:15
Nations 15:7, 26:23, 26:23, 26:24
Naval 18:19
Neal 9:4
necessarily 14:20, 44:4
necessity 18:23, 19:10, 31:4, 33:3
negotiations 24:22
neither 35:4
neutral 27:15
news 9:5
Nishitani 34:14
non-European 12:24
noncompliance 33:4
none 39:19
nor 38:25
notice 42:13, 42:19, 43:2, 43:5, 43:13, 43:19, 44:2, 44:18
novel 37:21
November 14:23
Numbers 4:2
Nuremberg 28:7, 28:8
NYU 12:1, 12:15

O

objection 13:22, 13:25, 44:15, 44:17
obligated 28:22
obligation 29:11, 43:1
obtaining 7:7, 10:22
obvious 9:25
obviously 37:11
occupation 6:10, 16:17, 16:17, 17:3, 19:17, 19:17, 26:4, 26:9, 27:20, 27:21, 28:25, 36:11, 36:12
occupations 26:12, 26:16
occupied 8:23, 17:3, 17:5, 17:6, 20:6, 27:2, 27:14, 27:19, 28:4, 29:3, 30:22, 31:1
occupier 16:19, 17:4, 36:13
occupy 16:25, 25:9
offered 14:1
office 23:24, 24:10, 36:16
officer 33:17
opinion 13:16, 23:25, 25:22, 25:23, 31:23, 34:3
opportunity 10:12
opposition 37:14
oral 5:11, 5:15
order 4:21, 18:25, 27:15, 29:4, 38:20, 39:8, 45:1
organ 15:25
Organic 20:11, 20:13, 35:4
orgins 39:12
original 7:16
Osorio 9:22
outlined 41:8
outside 9:15
overthrow 16:15, 16:23, 20:25, 37:22
overthrowing 16:12, 16:14
overthrown 16:11, 17:15, 22:18

P

pages 8:13, 44:11, 46:8
Palace 19:19
paragraph 23:4, 44:19
particular 10:9, 16:21, 30:1, 43:19
particularly 25:23
party 28:20, 29:8, 29:12, 43:7
pass 8:15, 10:1, 18:22, 19:8, 31:6
passed 8:5, 9:21, 19:13, 20:10, 20:24
passing 24:9
past 12:14, 41:12, 42:3
peace 29:6
Penal 41:5
perhaps 14:16, 29:24, 33:7
permanent 23:1
perplexing 32:12
personal 38:21, 38:22
personally 27:7
Ph.D 7:2, 7:8, 7:10, 7:14, 7:15, 7:23, 10:7, 10:19
Phelps 2:2, 4:10, 4:11, 5:7, 13:22, 33:15, 37:8, 37:9, 38:16, 44:15, 44:25, 45:5
phenomenon 26:7
Phillipines 18:18, 19:1
physically 15:5
places 33:7
pleadings 42:12
please 5:20, 6:1, 6:9, 6:19
plenary 30:16
point 15:6, 18:1, 22:22, 37:15, 38:20
pointed 41:10
points 19:7, 21:18, 37:18
Polis 9:10
political 7:1, 7:2, 7:12, 7:16, 8:1, 9:5, 9:7, 9:10, 11:19, 14:22, 15:4, 15:25, 21:15
Politics 11:4
population 26:15
pose 8:11
position 34:16, 35:16, 44:14
possible 26:19
power 24:2, 30:16
powers 15:10, 26:20, 40:7
precedent 24:4
precisely 21:5
predecessor 21:7
predicate 39:17
prepare 44:25
present 4:14, 4:20, 5:14, 6:10, 6:21, 7:21, 8:2, 12:13, 34:21, 40:12
presentation 44:8, 45:3
presentations 12:8, 12:8, 12:11, 12:12, 12:19, 13:2
presented 30:6, 34:6, 42:3, 42:6, 42:9, 42:19
presenter 12:22
presenting 39:3, 40:16
presently 36:13
preserves 22:17
president 18:3, 19:14, 20:15, 21:6, 24:5, 24:19, 24:23, 29:4, 30:13, 30:18, 30:20, 31:2, 31:18, 43:16
presidential 16:9
presiding 1:16
presumption 21:24, 22:2, 22:6, 22:10, 22:11, 22:13, 22:15, 22:20, 23:23, 24:12, 35:25
pretrial 45:8
prevail 41:2
prevailing 40:11, 43:25
principle 22:16
prior 16:22
problem 19:2, 21:4, 32:15, 33:1
Procedure 41:6
proceed 5:15, 6:2
proceedings 1:5, 1:14, 13:11, 45:16, 46:10
process 7:10, 8:17, 10:14, 32:17
professional 32:23
professor 9:12, 9:15, 9:19, 9:20, 9:22
professors 7:20, 8:8
prominant 28:5
prompted 28:10
proper 24:4, 33:8, 33:8, 33:11, 39:12
properly 30:8, 31:14
proposal 7:19, 8:5
proposed 7:25, 8:10, 10:17
prosecute 28:6
prosecuted 27:10
Prosecuting 2:2
prosecution 27:3
prosecution's 44:14
prosecutions 28:5
prosecutor 38:19, 39:11
prosecutor's 36:15
protect 18:25
prove 23:12, 35:20, 37:1
proved 39:22
proven 35:12
provide 6:19, 8:8, 11:8, 11:9, 13:16, 27:2, 29:23, 34:2, 34:20
provided 34:9, 34:23, 36:3, 36:19, 39:22, 42:17
providing 28:16
provisional 20:14, 21:7, 21:8
proxy 16:19, 16:20
public 7:3, 7:17, 9:7, 19:24, 30:7
publication 11:5, 11:11
publications 10:23, 12:6, 13:1
published 10:24, 11:1, 11:5, 23:2
Puerto 18:17
pundit 9:5
Purchase 17:23
purposes 42:5
pursuant 1:17, 1:20, 4:6, 4:9, 41:5

Q

qualifications 6:16
qualified 13:10, 13:15, 13:20
Queen 18:7, 24:19, 43:16
quick 32:3
quickly 32:11
quite 12:13, 32:12, 32:18
quo 17:3

R

raise 5:21
raised 38:24
ramifications 21:12
rate 42:2
reached 14:11
reading 11:23, 12:1
realize 39:16
really 33:10, 39:8
realm 25:8
reasons 38:4
rebut 23:23, 24:12, 35:24
receive 13:25
recently 12:8, 12:21
recess 45:6
recognition 15:24, 38:11
recognized 14:24, 15:1, 15:22, 17:11, 22:16, 23:5, 23:19, 23:21, 35:13
record 6:11, 9:3, 13:5, 18:9, 19:7, 19:12, 23:15, 24:18
records 24:7, 24:22, 39:25, 42:23, 43:8, 43:17
RECROSS 3:2
REDIRECT 3:2
refer 24:19
reference 24:6
referred 31:22
referring 25:6
reform 15:8
refused 39:6
refute 32:14
regalia 19:20
regard 27:13
regarding 9:11, 24:1, 26:12, 30:2
regardless 37:22, 39:12
regrettably 9:21
regular 29:15, 36:20
regulate 16:24
regulates 26:7
reinforce 19:1
reinstate 18:7
relations 7:2, 7:3, 7:13, 8:2, 16:7
relevant 10:24, 40:13
relies 38:20
relying 39:8
remains 26:3
remarks 41:11
report 45:2
Reporter 1:25, 46:7, 46:16
reports 23:3, 43:21
representatives 40:2
Republic 20:14, 21:3, 21:9, 21:21
request 37:3, 37:4, 42:17, 43:3, 43:5, 44:3, 44:5, 44:5
requested 44:7, 44:18, 44:19
required 11:23, 12:1, 40:24
requirements 7:9, 34:7
requires 40:12
research 7:21, 7:23, 8:10, 8:10, 8:20, 10:20, 14:4, 14:10, 19:23, 21:15, 24:13
researching 7:25
resist 27:20
resolution 18:22, 19:2, 19:13, 23:17, 24:1, 24:4, 24:9, 25:3, 25:10, 35:1, 39:24
resolve 32:9, 33:4
resolves 42:6
resonates 26:2
respect 25:23, 31:23, 36:2, 36:19, 36:24, 37:18, 38:8
respectfully 25:24, 34:12, 34:16, 36:6, 37:3, 37:4, 40:19, 42:8
response 38:18
restoration 43:15
restored 8:23
resubmitted 18:5
result 14:15, 41:13
retain 5:13
retention 36:18
retired 21:14, 32:24
review 7:24, 7:24, 11:1
Revised 36:17, 38:12
Rico 18:17
rights 22:12, 22:14
Rio 18:1
rise 45:6
risen 19:20
Robertson 31:9, 31:12
Robin 1:11, 1:18, 4:5, 4:7, 4:13, 37:5
Rousseau 9:10
RPR 1:24, 46:15
rule 23:8, 25:7, 33:2, 36:11
ruled 31:5, 37:21, 42:4, 42:4
Rules 41:5
rulings 41:17, 43:19
Rumsfeld 30:5, 31:2, 36:7
run 19:2

S

Sai 3:3, 5:19, 5:22, 6:9, 6:12, 6:14, 6:19, 7:8, 9:3, 9:25, 10:21, 11:7, 12:4, 12:7, 12:25, 13:9, 13:20, 14:4, 14:11, 24:16, 25:1, 25:21, 28:19, 29:18, 32:6, 33:12, 33:16, 34:7, 36:23, 39:21
Sai's 34:3, 35:11, 35:18, 37:16, 44:2
San 11:2
saying 24:7
says 20:13, 23:3
scheduled 5:12
Schoffield 18:20
schools 12:20, 19:25, 20:1, 27:24
science 7:1, 7:3, 7:12, 7:16, 9:11
scientist 9:7
seated 6:1
secondary 31:10
Secretary 14:25
Section 29:17
seize 18:24, 19:16
seizure 27:16
self-declared 20:15, 21:2, 21:4, 21:9, 21:10, 21:11, 21:11, 21:22
Senate 19:11
Senators 24:7
separation 15:10
shifts 22:10
showing 19:23
shows 21:16, 22:24
sic 34:24
sign 45:12
signed 19:15, 29:6
similar 27:12
simple 32:18
simply 34:17, 37:15, 38:10
situation 16:16, 18:5, 18:12, 26:8, 36:3
six 7:20, 8:8
so-called 10:12
Social 11:3
sociology 6:25
Soifer 9:12
sole 18:8
sorry 5:20, 6:4, 43:10
sought 36:16, 41:13
Southern 12:17
sovereign 38:3
sovereignty 9:9, 9:11, 9:18, 12:5, 16:18, 17:6, 17:17, 17:18, 17:22, 18:13, 19:9, 21:3, 25:16, 26:3, 26:5, 35:9, 39:18
span 12:19
Spanish 18:15, 18:17, 29:1, 29:5
speak 20:2, 20:2, 25:7
specializing 7:1, 7:12
specialty 10:7, 14:5
specific 26:12
specifically 20:13, 21:2, 28:12
spoke 25:2
spoken 38:10
stage 28:8
stand 5:21
stands 31:18, 45:6
start 33:8
state 1:2, 1:4, 1:9, 2:2, 4:3, 4:4, 4:11, 6:10, 8:23, 9:18, 12:17, 13:7, 13:22, 14:24, 14:25, 15:19, 15:21, 15:21, 16:1, 16:2, 16:3, 16:11, 16:15, 17:4, 17:5, 17:6, 17:16, 17:18, 18:10, 18:12, 20:19, 20:21, 21:11, 21:16, 21:20, 21:25, 22:1, 22:13, 22:21, 22:23, 22:25, 23:5, 23:9, 23:13, 24:14, 26:4, 27:2, 27:5, 27:6, 27:7, 31:1, 32:11, 33:15, 34:8, 34:12, 34:16, 35:20, 36:10, 36:16, 37:1, 37:9, 37:15, 37:24, 39:13, 41:21, 41:22, 43:23, 43:24
State's 5:7, 22:17
stated 18:24, 20:18, 21:2, 24:1, 28:13, 31:12, 41:19, 43:21
statehood 20:17, 21:19, 23:20, 25:3, 35:5, 39:23
statement 21:15
states 7:4, 8:4, 9:10, 12:24, 15:14, 15:16, 16:9, 16:13, 17:16, 17:22, 17:24, 18:16, 18:25, 19:4, 20:10, 20:24, 21:3, 23:6, 23:7, 23:11, 23:16, 24:5, 25:15, 25:17, 25:18, 26:6, 28:5, 28:19, 28:24, 29:13, 29:17, 30:4, 30:12, 30:13, 30:19, 30:20, 34:24, 35:2, 35:9, 35:20, 36:12, 39:17, 42:23, 43:7, 43:16
status 8:1, 14:19, 14:23, 17:3, 29:24
Statutes 36:18, 38:12
stepped 9:22
stories 20:3
Street 2:5
Studies 9:20, 9:23
stumbled 24:11
subject 14:7, 14:14, 14:18, 15:22, 21:17, 28:4, 29:24, 30:2, 33:24, 34:18, 36:5, 37:6, 37:12, 38:23, 41:10, 41:16, 42:10
submit 34:12, 37:13
submitted 8:25, 37:14
substance 26:13
successful 27:3
successfully 8:17, 8:24
successor 21:21
summary 39:8
supplemental 33:25, 34:1
support 44:20
Supreme 30:4, 30:12, 31:9, 34:23, 40:2, 43:22
sworn 5:24, 6:1
system 37:24

T

taken 16:25, 19:6
takes 7:18, 40:24
Tamanaha 13:13, 13:13
teach 11:22, 20:1
teaching 11:19, 27:23
teleconferenced 9:17
temporarily 16:20
temporary 16:19
terms 28:22
Territorial 25:3
territories 20:7, 28:4, 29:3, 30:22
territory 16:6, 16:6, 16:25, 17:6, 17:24, 20:12, 20:16, 20:18, 21:10, 21:20, 23:19, 25:5, 29:5, 29:7, 30:14, 30:17, 31:3, 31:7, 31:19, 31:20, 35:3, 35:5, 35:7, 35:10
test 8:9
testified 5:25, 25:2, 34:4, 36:22
testify 5:14, 5:17, 13:10, 13:21
testifying 11:10
testimony 5:14, 6:15, 18:20, 18:24, 33:16, 33:17, 34:7, 35:11, 35:12, 35:18, 37:16, 40:2, 40:4
text 11:16
thank 5:5, 6:4, 10:21, 12:6, 14:2, 24:16, 29:19, 32:2, 32:6, 33:12, 33:16, 33:19, 33:21, 37:6, 38:15, 38:16, 41:2, 42:16, 45:2, 45:4, 45:5, 45:15
theirs 34:16
themselves 29:7, 38:1
there's 30:1
therefore 24:2, 24:4, 24:11, 30:9
they're 10:6, 27:6, 27:24, 29:8, 31:14
thing 22:23
though 42:11
throughout 15:13, 15:16, 15:17
Thursday 1:16, 4:1
title 8:21, 29:17
today 14:21, 20:9, 34:4, 41:4, 42:12, 42:14, 45:3
topic 8:9
topics 12:11
toward 26:17
transcend 39:15, 40:18
TRANSCRIBED 1:24
transcript 1:5, 1:14, 46:9
transfer 17:20, 17:21
transformed 15:9
transition 8:23, 32:16, 32:18
treaties 25:19, 35:15, 35:15, 35:15,

42:22, 43:1, 43:2, 43:6
treaty 17:19, 17:23, 17:25, 18:3, 18:4, 18:5, 18:6, 18:15, 20:22, 23:17, 29:6
trial 27:2, 28:6, 28:14, 28:17, 29:15, 30:10, 31:11, 31:14, 31:15, 33:11, 36:21, 41:16, 42:6, 45:9
trials 28:2, 28:7, 28:9
tribunal 28:6, 31:3
tribunals 30:8, 30:11, 30:14, 30:18, 30:21, 30:25, 31:11, 31:21
troops 19:1
true 25:7, 28:19, 46:9
turned 6:5, 31:6

U

U.S 9:13, 15:17, 18:19, 19:16, 19:21, 20:20, 21:19, 21:20, 21:22, 23:18, 23:18, 23:20, 24:7, 25:6, 30:14, 31:3, 31:7, 31:19, 38:11, 43:8, 43:22, 43:22, 43:23
Ua 12:5
unclear 24:2
undermine 30:15
understand 5:12, 11:7, 12:7, 14:6, 21:12, 22:4, 32:19, 32:21
understanding 5:7, 10:3, 25:11, 32:20
understands 22:4
understood 5:2, 31:17
undisputed 39:24
unfair 28:2, 28:6, 28:14
unique 16:2
United 7:4, 8:3, 15:14, 15:16, 16:9, 16:13, 17:16, 17:22, 17:24, 18:16, 18:25, 19:3, 20:10, 20:23, 21:3, 23:6, 23:11, 23:16, 24:5, 26:6, 26:23, 26:23, 26:24, 26:25, 28:19, 28:24, 29:13, 29:17, 30:4, 30:12, 30:13, 30:19, 30:20, 34:24, 35:2, 35:8, 35:20, 36:12, 39:17, 42:22, 43:7, 43:16
universities 12:14, 12:18
University 6:13, 6:25, 9:16, 11:2, 11:3, 11:24, 11:25, 12:2, 12:2, 12:15, 12:16, 12:16, 12:17, 12:22
up-to-date 11:21
upon 7:15, 22:7, 22:7, 25:18
user 11:19

V

various 23:7, 42:13
VD 3:2
verified 23:8
version 11:18
versus 4:3, 4:4, 13:13, 30:4, 31:2, 34:8, 34:14, 34:24, 36:7, 43:20, 43:22, 43:23, 43:24
view 41:24, 42:5, 42:8
violation 30:9, 36:21
virtue 36:15
vitae 11:9, 34:3
voluntary 17:20, 17:21
vote 19:6

W

waging 18:16
Wailuku 2:3
Wainuhea 1:11, 1:18, 4:5, 4:7
waiver 45:12
wanted 4:20, 4:22, 5:2, 11:10, 24:17, 25:1
war 17:24, 17:25, 18:15, 18:16, 18:20, 18:23, 19:10, 20:7, 20:7, 20:8, 26:17, 26:18, 26:18, 26:21, 26:22, 27:4, 27:4, 27:9, 27:11, 27:13, 27:17, 27:17, 27:18, 28:2, 28:4, 28:6, 28:14, 28:15, 28:17, 29:1, 29:14, 29:16, 30:23, 30:23, 30:24
Washington 15:15
watered 11:18
we're 16:22, 19:10, 26:1, 37:11, 37:13, 38:10, 39:16, 40:16, 40:17, 40:23
we've 34:11, 34:15, 34:23, 35:12, 36:25, 40:16
week 8:14
west 18:25
what's 7:9, 20:23, 22:25, 31:8, 44:13
whereas 21:2
whereases 21:1
whereby 15:9
whether 17:19, 31:13, 38:2
who's 38:9
whose 9:20
Wilson 9:9
Windward 6:13
wish 40:19, 42:1
withdrew 18:4
within 7:15, 16:6, 17:5, 20:1, 26:1, 28:3, 29:3, 30:14, 31:3, 31:7, 31:11
witness 5:13, 5:16, 5:23, 6:3, 13:20, 13:25, 33:18
WITNESSES 3:2
wouldn't 10:18
writing 8:20, 44:18
written 11:12, 29:1, 34:4, 44:8
wrong 34:25

Y

yeah 33:1, 43:12, 44:13
yesterday 45:8
York 12:1, 12:15
you'd 32:7
Young 9:20

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

KAIULA KALAWE ENGLISH and ROBIN WAINUHEA DUDOIT, Petitioners, vs. THE HONORABLE JOSEPH E. CARDOZA, CIRCUIT JUDGE, SECOND JUDICIAL CIRCUIT, Respondent.	)	SCPW-15-0000236 **CERTIFICATE OF SERVICE** **[Re: Petition For Writ of Mandamus to the Second Circuit, County of Maui, State of Hawai'i, filed March 27, 2015]**

CERTIFICATE OF SERVICE

Dexter K. Kaiama 4249
111 Hekili Street, Suite A1607
Kailua, Hawai'i 96734
Phone No. (808) 284-5675

Attorney for Petitioners

CERTIFICATE OF SERVICE

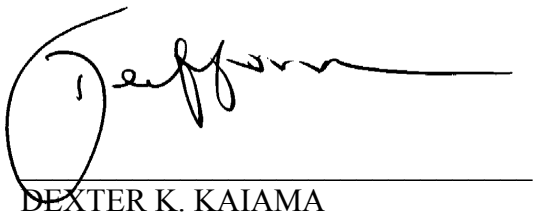
The undersigned hereby certify that, on March 27, 2015, a copy of the Petition for Writ of Mandamus to the Second Circuit, County of Maui, State of Hawaii (filed March 27, 2015) was duly served upon the following by mailing a copy of same via hand delivery or U.S. Postal Service, postage prepaid or electronic delivery to the last known address to:

Department of the Attorney General
425 Queen Street
Honolulu, HI 96813
Attorney for Respondent

Honorable Joseph E. Cardoza
Circuit Court of the Second Circuit,
State of Hawai'i
2145 Main Street
Wailuku, Hawai'i 96793
Respondent

Lloyd C. Phelps II, Deputy Prosecutor
Dept. of the Prosecuting Attorney
County of Maui
150 S. High Street
Wailuku, HI 96793
Attorney for STATE OF HAWAII

Dated: Honolulu, Hawai'i, March 27, 2015.



DEXTER K. KAIAMA
Attorney for Petitioners