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July 6, 2012

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

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

Dear ADMIRAL SAMUEL J. LOCKLEAR III, USN:

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

The following information is provided to you as required by Section 495(b), Department of the Army Field Manual 27-10; Hague Convention No. IV, *Respecting the Laws and Customs of War on Land*, 18 October 1907; Geneva Convention *Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949; and Title 18 U.S.C. §2441(c)(1)—Definition of War Crime.

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

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

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

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

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

...

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

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

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

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

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

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

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

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

Unable to procure a treaty of cession from the Hawaiian Kingdom government acquiring the Hawaiian Islands as required by international law, Congress enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War (30 U.S. Stat. 750) as a war measure. The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War. The occupation was justified as a military necessity in order to reinforce and supply the troops that have been occupying the Spanish colonies of Guam and the Philippines since May 1, 1898. Following the close of the Spanish-American War by the Treaty of Paris signed December 10, 1898 (30 U.S. Stat. 1754), U.S. troops remained in the Hawaiian Islands and continued its occupation to date in violation of international law.

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Article 6, 1863 Lieber Code, regulated U.S. troops during the occupation of the Hawaiian Islands in 1898 and mandated the Commander of U.S. troops to administer the laws of the occupied country, being the civil and penal laws of the Hawaiian Kingdom. Article 6 was superseded by Article 43, 1899 Hague Convention, II (32 U.S. Stat. 1803), and then superseded by Article 43, 1907 Hague Convention, IV (36 U.S. Stat. 2227). Article 43 of the 1907 Hague Convention, IV, reinforces the 1893 *Lili'uokalani assignment* that mandates the President to administer the civil and penal laws of the Hawaiian Kingdom. On August 12, 1949, the United States signed and ratified the (IV) *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* of 12 August 1949 (6 U.S.T. 3516, T.I.A.S No. 3365, 75 U.N.T.S. 287). In July 1956, the U.S. Department of the Army published Field Manual 27-10—The Law of Land Warfare.

Furthering the illegal occupation, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i* on April 30, 1900 (31 U.S. Stat. 141); and on March 18, 1959, President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai'i into the Union* (73 U.S. Stat. 4). These laws, which include the 1898 joint resolution of annexation, have no extraterritorial effect and stand in direct violation of the *Lili'uokalani assignment* and *Agreement restoration*, being international compacts, the 1907 Hague Convention, IV, and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV.

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

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

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

Section 510 (FM 27-10). Government Officials

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

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

STATEMENT OF FACTS

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

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

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

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

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

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

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

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

PROTEST AND DEMAND

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

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

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

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

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

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

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

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

Sincerely,



Dexter K. Kaiama, Esq.

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Encls.

CC: BARRACK OBAMA, President
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Sent To Admiral Locklear, HA US PACOM
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PS Form 3800, August 2006 See Reverse for Instructions