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September 2, 2024

Lieutenant Colonel Joshua A. Jacobs
Commander of 29th Brigade Support Battalion
Email: joshua.a.jacobs.mil@army.mil

Via electronic mail

Re: Your duty to establish a military government by 12 noon on September 9, 2024

Lieutenant Colonel Jacobs:

Today, September 2, 2024, the Royal Commission of Inquiry (“RCI”) published its War Criminal Report no. 24-0005 finding Lieutenant Colonel Bingham L. Tuisamatatele, Jr. guilty of the war crime by omission.¹ LTC Tuisamatatele willfully disobeyed an Army regulation and was willfully derelict in his duty to establish a military government. Therefore, his conduct, by omission, constitutes a war crime. LTC Tuisamatatele, in his official capacity as a senior member of the State of Hawai‘i Department of Defense, has met the requisite elements for the war crime by omission, by willfully disobeying an Army regulation and by willful dereliction in his duty to establish a military government, and is, therefore, guilty of the war crime by omission. These offenses do not have the requisite element of *mens rea*.

The term “guilty,” as used in the RCI war criminal reports, is defined as “[h]aving committed a crime or other breach of conduct; justly chargeable offense; responsible for a crime or tort or other offense or fault.”² It is distinguished from a criminal prosecution where “guilty” is used by “an accused in pleading or otherwise answering to an indictment when he confesses to have committed the crime of which he is charged, and by the jury in

¹ Royal Commission of Inquiry, *War Criminal Report 24-0005—Bingham L. Tuisamatatele, Jr.* (September 2, 2024) (online at https://hawaiiankingdom.org/pdf/RCI_War_Criminal_Report_no._24-0005.pdf).

² Black’s Law 708 (6th ed. 1990).

convicting a person on trial for a particular crime.”³ According to U.S. military law, LTC Tuisamatatele is accountable by court-martial or nonjudicial punishment under Article 15, UCMJ. Under international criminal law, LTC Tuisamatatele is subject to prosecution, by a competent court or tribunal, for the war crime by omission.

Consequently, as the Commander of the 29th Brigade Support Battalion, you are now the theater commander. You should assume the chain of command, as the theater commander of the occupied State of Hawaiian Kingdom and perform your duty of establishing a military government by 12 noon on September 9, 2024. In my letter to LTC Tuisamatatele, dated August 26, 2024, I recommended that he submit a formal request to Major General Hara, as head of the Department of Defense, to request that the Attorney General, Anne Lopez, according to Hawai‘i Revised Statutes §28-3, provide a legal opinion that refutes the legal opinions of Professor William Schabas and Professor Federico Lenzerini that the Hawaiian Kingdom continues to exist as a State under international law. It is a request as to a question of law, which the Attorney General is bound to answer, but a request from the head of the Department of Defense is required under §28-3.

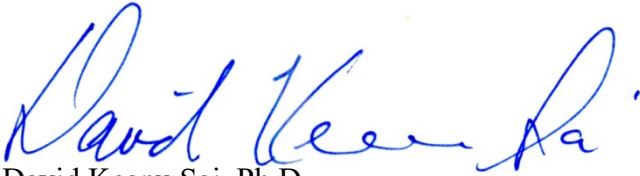
It would appear that LTC Tuisamatatele did not do so, which led to the publishing of War Criminal Report no. 24-0005. For you to not perform this military duty of establishing a military government of Hawai‘i, you will need a legal opinion from the Attorney General concluding that the State of Hawai‘i exists within the territory of the United States, and not within the territory of the Hawaiian Kingdom. I am attaching a sample letter from you to Major General Hara requesting of the Attorney General for a legal opinion according to §28-3.

If you make this request to MG Hara prior to 12 noon on September 9, 2024, then you will not be derelict in your military duty, because the Royal Commission of Inquiry will then give time for MG Hara to make a formal request for a legal opinion from the Attorney General and give time for the legal opinion to be completed.

If you are derelict in the performance of your duty to establish a military government, then you would be the subject of an RCI war criminal report for the war crime by omission. From the date of the publication of your war criminal report on the RCI’s website, Lieutenant Colonel Dale R. Balsis, Commander of 227th Brigade Engineer Battalion, will assume command of the Army National Guard and will have one week to transform the State of Hawai‘i into a military government.

³ *Id.*

As you are aware, U.S. military officers are held to the highest personal and professional standards. When those standards are not met, officers may be administratively punished or criminally prosecuted. For you not to demand from the Attorney General for a legal opinion that the Hawaiian Kingdom no longer exists under international law, is to place the men and women, under your command, into harm's way with criminal culpability under both military law and international criminal law. To ignore this will have dire consequences for the Hawai'i Army National Guard.



David Keanu Sai, Ph.D.

Head, *Royal Commission of Inquiry*

cc: Major General Kenneth Hara, Adjutant General

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Brigadier General Stephen F. Logan, Deputy Adjutant General

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Colonel Wesley K. Kawakami, Commander, 29th Infantry Brigade

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Lieutenant Colonel Fredrick J. Werner, Commander, 1st Squadron,
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Lieutenant Colonel Bingham L. Tuisamatatele, Jr.

Commander of 1st Battalion, 487th Field Artillery Regiment

(bingham.l.tuisamatatele2.mil@army.mil)

Lieutenant Colonel Dale R. Balsis, Commander of 227th Brigade Engineer
Battalion

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Professor Federico Lenzerini, Deputy Head, Royal Commission of Inquiry

(federico.lenzerini@unisi.it)

Sir:

I have been notified, by letter dated September 2, 2024, from the Royal Commission of Inquiry, that I have until 12 noon on September 9, 2024, to perform a military duty of establishing a military government of Hawai'i. The Royal Commission of Inquiry stated that, for me not perform this duty, I should seek a legal opinion from Attorney General Anne E. Lopez, that the Hawaiian Kingdom ceases to exist under international law, thereby, rendering this existence claim frivolous.

According to Hawai'i Revised Statute §28-3, "The attorney general shall, when requested, give opinions upon questions of law submitted by the governor, the legislature, or its members, or the head of any department." As I am not the head of the Department of Defense, I am asking you to make a formal request of the Attorney General for a legal opinion because the existence or non-existence of the Hawaiian Kingdom is a question of law that I am not qualified to answer.

Proposed question for the Attorney General:

Considering the two legal opinions by Professor Matthew Craven and Professor Federico Lenzerini, that conclude the Hawaiian Kingdom continues to exist as a State under international law, which are enclosed with the request, is the State of Hawai'i within the territory of the United States or is it within the territory of the Hawaiian Kingdom?