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July 3, 2024

Major General Kenneth Hara
State of Hawai'i Adjutant General
Department of Defense
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Honolulu, HI 96816
Email: kenneth.s.hara.mil@army.mil

Via electronic mail

Re: Whether Attorney General Anne E. Lopez's instruction to you is a lawful order

Major General Hara:

Your decision to delegate, or to not delegate, full authority and title to Brigadier General Stephen Logan to perform the duty of establishing a military government, has profound consequences for you and the chain of command of the Army National Guard, and, possibly, the Air National Guard. This is a command decision that cannot be underestimated. As a Title 32 Army general officer, who is currently the Director of the State of Hawai'i Department of Defense, Attorney General Anne E. Lopez is your legal adviser for State of Hawai'i matters, but Lieutenant Colonel Phelps, as your Staff Judge Advocate, is your legal adviser for military matters. However, if you were activated for deployment to a foreign country, as you were deployed to Baghdad, Iraq, in 2005, the Attorney General would no longer be your legal adviser. Your legal adviser was then exclusively the Staff Judge Advocate that was in country with you and your unit.

From a military standpoint, Attorney General Lopez's instruction to you, to ignore the calls to transform the State of Hawai'i into a military government, would, at first glance, be considered a lawful order. Therefore, it is presumed to be valid. According to *United States v. Kisala*, 64 M.J. 50 (2006), the essential attributes of a lawful order, that sustains the

presumption of lawfulness, include: (1) issuance by competent authority—a person authorized by applicable law to give such an order; (2) communication of words that express a specific mandate to do or not do a specific act; and (3) relationship of the mandate to a military duty. In light of the presumption of lawfulness, long-standing principles of military justice places the burden of rebutting this presumption on you.

You currently have two conflicting duties to perform—follow the order given to you by the Attorney General or obey an Army regulation. To follow the former, you incur criminal culpability for the war crime by omission. To follow the latter, you will not incur criminal culpability. As you are aware, soldiers must obey an order from a superior, but if complying with that order would require the commission of a war crime, then the order is not lawful, and it, therefore, must be disobeyed. The question to be asked of the Attorney General is whether the State of Hawai‘i is within a foreign State’s territory or whether it is within the territory of the United States. If the Hawaiian Islands is within the territory of the United States, then the Attorney General’s instruction can be considered a lawful order, but if the Hawaiian Islands constitute the territory of the Hawaiian Kingdom, an occupied State, then the order is unlawful, and must be disobeyed.

Because you have been made aware, and acknowledged on July 27, 2023, that the Hawaiian Kingdom continues to exist as a matter of international law, you must question the Attorney General’s instruction to you. Just as I recommended to you, when we first met at the Grand Naniloa Hotel in Hilo on April 13, 2023, to have your Staff Judge Advocate refute the information I provided you regarding the presumed existence of the Hawaiian Kingdom as an occupied State under international law, I would strongly recommend you request the Attorney General to do the same.

Under international law, there is a presumption that the Hawaiian Kingdom, as a State, continues to exist as a subject of international law despite the unlawful overthrow of its government by the United States on January 17, 1893. According to Judge Crawford, there “is a presumption that the State continues to exist, with its rights and obligations [...] despite a period in which there is no, or no effective, government,”¹ and belligerent occupation “does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State.”² Professor Craven explains:

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

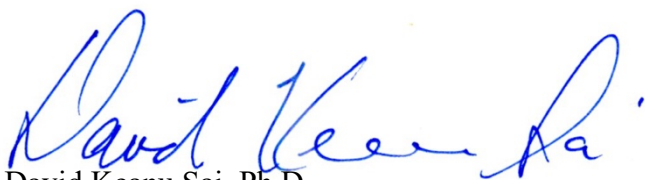
¹ James Crawford, *The Creation of States in International Law* 34 (2nd ed., 2006).

² *Id.*

sovereignty, on the part of the United States, absent of which the presumption remains.³

Evidence of ‘a valid demonstration of legal title, or sovereignty, on the part of the United States’ would be an international treaty, particularly a peace treaty, whereby the Hawaiian Kingdom would have ceded its territory and sovereignty to the United States. Examples of foreign States ceding sovereign territory to the United States by a peace treaty include the 1848 *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*⁴ and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain*.⁵ If the Attorney General is unable to rebut the presumption of continuity and the Permanent Court of Arbitration’s recognition of the continued existence of the Hawaiian Kingdom, as a State, in *Larsen v. Hawaiian Kingdom*,⁶ then you must disobey her instruction because she is NOT ‘a person authorized by applicable law to give such an order.’

You have until July 31, 2024, to either make a command decision to delegate your authority to BG Logan and retire, or should you refuse to delegate your authority, then you will be the subject of a war criminal report for the war crime by omission. Your refusal will meet the requisite element of “willfulness” for the war crime by omission.



David Keanu Sai, Ph.D.

Head, *Royal Commission of Inquiry*

cc: Brigadier General Stephen F. Logan, Deputy Adjutant General
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³ Matthew Craven, “Continuity of the Hawaiian Kingdom as a State under International Law,” in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 128 (2020) (online at <https://hawaiiankingdom.org/royal-commission.shtml>).

⁴ 9 Stat. 922 (1848).

⁵ 30 Stat. 1754 (1898).

⁶ Permanent Court of Arbitration, Case Repository, *Larsen v. Hawaiian Kingdom*, PCA case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>).