

DEXTER K. KA‘IAMA (Bar No. 4249)  
DEPARTMENT OF THE ATTORNEY  
GENERAL, HAWAIIAN KINGDOM  
P.O. Box 2194  
Honolulu, HI 96805-2194  
Telephone: (808) 284-5675  
Email: [attorneygeneral@hawaiiankingdom.org](mailto:attorneygeneral@hawaiiankingdom.org)

*Attorney for Plaintiff, Hawaiian Kingdom*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

HAWAIIAN KINGDOM,

Plaintiff,

v.

JOSEPH ROBINETTE BIDEN JR., in his  
official capacity as President of the United  
States; KAMALA HARRIS, in her official  
capacity as Vice-President and President of  
the United States Senate; ADMIRAL JOHN  
AQUILINO, in his official capacity as  
Commander, U.S. Indo-Pacific Command;  
CHARLES P. RETTIG, in his official  
capacity as Commissioner of the Internal  
Revenue Service; et al.,

Defendants.

Civil No. 1:21:cv-00243-LEK-RT

PLAINTIFF HAWAIIAN  
KINGDOM’S NOTICE OF  
APPEAL TO A COMPETENT  
COURT OF APPEALS TO BE  
HEREAFTER ESTABLISHED BY  
THE UNITED STATES AS THE  
OCCUPYING POWER;  
CERTIFICATE OF SERVICE

**PLAINTIFF HAWAIIAN KINGDOM’S NOTICE  
OF APPEAL TO A COMPETENT COURT OF  
APPEALS TO BE HEREAFTER ESTABLISHED  
BY THE UNITED STATES AS THE OCCUPYING POWER**

**TO THE COURT AND TO ALL PARTIES HEREIN:**

PLEASE TAKE NOTICE that Plaintiff HAWAIIAN KINGDOM, hereby preserves the record of these proceedings by its notice to appeal to a competent court of appeals to be hereafter established in the Hawaiian Kingdom by the United States as an Occupying Power in accordance with international humanitarian law from the Order granting in part and denying in part Defendant Nervell's Motion to Dismiss [ECF 222], Order denying Plaintiff's Motion for Judicial Notice [ECF 223], and Minute Order denying Plaintiff's Motion for Reconsideration and Motion to Amend [ECF 227] (hereafter "Minute Order").

The Court, in its Minute Order, did not deny the customary international rule of the presumption of continuity of the Hawaiian Kingdom as a sovereign and independent State as fully elucidated in Plaintiff's Motion for Reconsideration and Motion to Amend [ECF 225], nor did the Court provide any rebuttable evidence to the presumption of continuity that the Hawaiian Kingdom was extinguished as a State under international law. The international rule of the presumption of continuity is international law and, therefore, is an accepted part of American law that must be applied by federal courts. See *The Paquette Habana*, 175 U.S. 677, 700 (1900) ("[i]nternational law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination").

In its Minute Order, the Court disregarded international law and simply stated, “[a]lthough Plaintiff argues there are manifest errors of law in the 3/30/22 Order and the 3/31/22 Order, Plaintiff merely disagrees with the Court’s decision.” This terse statement of the Court neither denies the international rule of the presumption of continuity nor provides rebuttable evidence to the contrary. As such, the Court, by not providing rebuttable evidence to the presumption of continuity, acknowledged the continuity of the Hawaiian Kingdom as a sovereign and independent State and yet disregarded its obligation under international law to transform itself into an Article II Occupation Court.

Although the “Occupying Power is [...] free to decide whether or not the competent courts of appeal are to sit in occupied territory,” Article 66 of the *Fourth Geneva Convention* “states that they should ‘preferably’ sit in the occupied country; this would be likely to provide the protected persons with additional safeguards.” See Jean S. Pictet, *Commentary IV Geneva Convention* (1958), 341. The United States has not established “competent courts of appeal” in the Hawaiian Kingdom or in the United States to address the Hawaiian Kingdom’s instant appeal.

Consequently, the Court’s disregard of obligations mandated under international law, in its refusal to transform, and the inability of Plaintiff to appeal to an Article II appellate court has willfully deprived Plaintiff of its “rights of fair

and regular trial,” thus being a “grave breach” of the 1949 Fourth Geneva Convention, Article 147, 6.3 U.S.T. 3516, 3618 (1955); 18 U.S.C. §2441(c)(1).

In accordance with common Article 3 of the Geneva Conventions, only a “regularly constituted court” may pass judgment. This Court, while situated in the territory of the Hawaiian Kingdom, was established by virtue of a United States municipal law (*An Act to provide for the admission of the State of Hawaii into the Union*, section 9, Pub. L. 86-4, 73 Stat. 4, 8 (1959)), which cannot “extend beyond [U.S. territory] [...] [and] can have no force to control the sovereignty or rights of any other nation within its own jurisdiction.” *The Apollon*, 22 U.S. 362, 370 (1824); *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936) (“[n]either the [federal] Constitution nor the [federal] laws passed in pursuance of it have any force in foreign territory”); *In Re Francis de Flanchet*, 2 Haw. 96, 108-109 (1858) (“[t]he laws of a nation cannot have force to control the sovereignty or rights of any other nation within its own jurisdiction. And however general and comprehensive the phrases used in the municipal laws may be, they must always be restricted in construction, to places and persons upon whom the Legislature have authority and jurisdiction”); see also Douglas W. Kmiec, “Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea,” 12 *Op. O.L.C.* 238, 342, 252 (1988) regarding the annexation of Hawai‘i by a joint resolution (“we doubt that Congress has constitutional authority to assert either sovereignty over an extended

territorial sea or jurisdiction over it under international law on behalf of the United States. [...] It is therefore unclear which constitutional power of Congress exercised when it acquired Hawaii by joint resolution.”). Kmiec further concluded, “[t]he clearest source of constitutional power to acquire territory is the treaty making power. Under the Constitution, the President ‘shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur.’ U.S. Const. art. II, §2, cl. 2. It is pursuant to that power that the United States has made most acquisitions of territory, as a result of either purchase or conquest.” *Id.*, 247. Neither the 1898 Joint Resolution of annexation nor the 1959 Hawai‘i Admissions Act come under the treaty making power of the President. Therefore, this Court is not a “regularly constituted court.”

In *Hamden v. Rumsfeld*, 548 U.S. 1, 69 (2006), the Supreme Court addressed what constitutes a “regularly constituted court” under international law.

The [International Committee of the Red Cross] commentary accompanying a provision of the Fourth Geneva Convention [...] defines “regularly constituted” tribunals to include “ordinary military courts” and “definitely exclud[e] all special tribunals.” GCIV [1949 Geneva Convention IV] Commentary 340 (defining the term “properly constituted” in Article 66, which the commentary treats as identical to “regularly constituted”); see also *Yamashita*, 327 U.S., at 44, 66 S. Ct. 340, 90 L. Ed. 499 (Rutledge, J., dissenting) (describing military commission as a court “specially constituted for a particular trial”). And

one of the Red Cross' own treatises defines "regularly constituted court" as used in Common Article 3 to mean "established and organized in accordance with the laws and procedures already in force in a country." Int'l Comm. of Red Cross, 1 Customary International Humanitarian Law 355 (2005); see also GCIV Commentary 340 (observing that "ordinary military courts" will "be set up in accordance with the recognized principles governing the administration of justice").

This Court was not "established and organized in accordance with the laws and procedures already in force" in the Hawaiian Kingdom, nor "in accordance with the recognized principles governing the administration of justice." Accordingly, the Hawaiian Kingdom's notice of appeal is submitted for purposes of preserving the record of these proceedings in its appeal until this Court transforms or a competent Article II appellate court is established in compliance with international humanitarian law and Hawaiian Kingdom law.

The Court can learn from the Hawaiian Kingdom Supreme Court, in *Shillaber v. Waldo et al.*, 1 Haw. 31, 32 (1848), where Chief Justice William Lee stated, "In the language of another, 'Let justice be done though the heavens fall.' Let the laws be obeyed, though it ruin every judicial and executive officer in the Kingdom. Courts may err. Clerks may err. Marshals may err—they do err in every land daily; but when they err let them correct their errors without consulting pride, expediency, or any other consequences."

DATED: Honolulu, Hawai‘i, April 24, 2022.

Respectfully submitted,

/s/ Dexter K. Ka‘iama

DEXTER K. KA‘IAMA (Bar No. 4249)  
Attorney General of the Hawaiian Kingdom  
DEPARTMENT OF THE ATTORNEY  
GENERAL, HAWAIIAN KINGDOM

*Attorney for Plaintiff, Hawaiian Kingdom*