IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I

STUDENTS FOR FAIR ADMISSIONS,

Plaintiff,

v.

TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP d/b/a KAMEHAMEHA SCHOOLS,

Defendant.

Civil No. 1:25-cv-450-MWJS-RT

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF THE DEFENDANT; BRIEF OF AMICI CURIAE; CERTIFICATE OF COMPLIANCE; PROPOSED ORDER; CERTIFICATE OF SERVICE

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MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF ON BEHALF OF INTERNATIONAL SCHOLARS WITH EXPERTISE IN INTERNATIONAL LAW AND HUMAN RIGHTS LAW

Counsel for *amici curiae* Minister Dr. David Keanu Sai, Ph.D., Minister Kauʻi P. Sai-Dudoit, Attorney General Dexter Keʻeaumoku Kaʻiama, J.D., Professor Federico Lenzerini, Ph.D., Professor Prabhakar Singh, Ph.D., Professor Alfred de Zayas, Ph.D., Professor Keiki Kawaiʻaeʻa, Ph.D., Professor Debora Halbert, Ph.D., J.D., Professor Jonathan Kay Kamakawiwoʻole Osorio, Ph.D., Professor Peter Kalawaiʻa Moore, Ph.D., Professor Ty Kāwika Tengan, Ph.D., Professor Candace Fujikane, Ph.D., Professor Alethea Kuʻulei KD Serna, Ph.D., Professor Tēvita O. Kaʻili, Ph.D., Professor Erin Kahunawaikaʻala Wright, Ph.D., Professor Noa Kekuewa Lincoln, Ph.D., Professor Monisha Das Gupta, Ph.D., Professor Deborah Zuercher, Ph.D., Professor Kealalōkahi Clarke Losch, Ed.D., Professor T. Kuʻuipo Losch, Ed.D., Professor Houchang E. Chehabi, Ph.D., Professor Michael Shapiro, Ph.D., Professor M. Puakea Nogelmeier, Ph.D., Professor Ibrahim G. Aoudé, Ph.D., Professor Virginia Metaxas, Ph.D., Professor Catherine E. Hoyser, Ph.D., Professor Carol S. Austad, Ph.D., Professor Pascal Lottaz, Ph.D., Professor Masahide Kato, Ph.D., Professor Dean Itsuji Saranillio, Ph.D., Professor Iokepa Casumbal-Salazar, Ph.D., Professor Wendell “Kekailoa” Perry, Ph.D., J.D., Professor Noelani Iokepa-Guerrero, Ed.D., Professor Ngoc Phan, Ph.D., Professor Keolu Fox, Ph.D., Professor Hiapokeikikāne K. Perreira, Ph.D., Professor Rachel L. Burrage, Ph.D., M.S.W.,

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1. *Amici curiae*, Minister Dr. David Keanu Sai, Ph.D. and Professor Federico Lenzerini, Ph.D., the international scholars whose views are represented in this brief, along with attesting *amici curiae* Professors Prabhakar Singh, Ph.D., and

Alfred de Zayas, Ph.D., all have expertise in public international law, international human rights, international humanitarian law, and norms regarding statehood and sovereignty, self-determination and the rule of law. The remaining *amici*, other than officials of the Council of Regency, except for Minister Dr. David Keanu Sai, have joined solely representing themselves as doctoral degree recipients that understand the highest level of academic and legal research, and attest the *amici* brief to be factual and true. The *amici* have doctoral degrees, and their nationalities are from eleven countries—France, Germany, Hawaiian Kingdom, India, Italy, Japan, Palestine, Philippines, Solomon Islands, Switzerland, and the United States. All *amici* have an interest in ensuring an informed interpretation by the Court of the consequences that international humanitarian law, the law of occupation, and international criminal law have on its jurisdiction.

2. Movants submit this brief to protect the Defendant, Kamehameha Schools, an entity created under the nineteenth century laws of the Hawaiian Kingdom—laws that continue to apply today under the law of occupation, as well as future generations of aboriginal Hawaiians who were the intended beneficiaries of Ali‘i Pauahi’s trust.

3. Plaintiff did originally consent to filing of the *amici* brief, but later denied consent, on a basis *amici curiae* contend is unsupported by law. Defendant

has requested the *amici* to file a brief, and, therefore, has consented to the filing of this brief.

4. For the foregoing reasons, we respectfully request the Court's permission to file the *amici* brief attached hereto. In the alternative, we request a pre-motion conference with the Court for leave to file such a brief.

Dated: September 2, 2026

Respectfully submitted,

/s/ Minister Dr. David Keanu Sai, Ph.D.

/s/ Minister Kauʻi P. Sai-Dudoit

/s/ Attorney General Dexter Keʻeaumoku Kaʻiama, J.D.

/s/ Professor Federico Lenzerini, Ph.D.

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EXHIBIT 1 AND EXHIBIT 2

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DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* state that they are all natural persons.

Dated: September 2, 2026.

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES……ii

INTERESTS OF *AMICI CURIAE*……..vii

INTRODUCTION……1

ARGUMENT……2

I. THIS COURT IS NOT REGULARLY CONSTITUTED BECAUSE THE HAWAIIAN KINGDOM CONTINUES TO EXIST AS A STATE UNDER INTERNATIONAL LAW……...2

A. *The Existence of the Hawaiian Kingdom as an independent State since the Nineteenth Century*……...2

B. *The Restoration of the Government of the Hawaiian Kingdom by a Council of Regency serving in the absence of an Executive Monarch*……....9

C. *Successor States to Hawaiian Kingdom Treaties*……...11

D. *Larsen v. Hawaiian Kingdom at the Permanent Court of Arbitration*……...12

II. THE LORENZO PRINCIPLE……18

III. WHAT CONSTITUTES A REGULARLY CONSTITUTED COURT……22

IV. WAR CRIMES OF USURPATION OF SOVEREIGNTY DURING OCCUPATION AND DEPRIVATION OF FAIR AND REGULAR TRIAL……24

CONCLUSION……...28

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Page(s)

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Jean S. Pictet, Commentary—*The Geneva Conventions of 12 August 1949* (1958)……..7

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William Schabas, "Legal Opinion on War Crimes Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893," 3 *Haw. J.L. & Pol.* 334, 340, 358 (2021) (https://hawaiiankingdom.org/pdf/3HawJLPol334_(Schabas).pdf).....6, 25

Humphrey Waldock, Special Rapporteur, Second Report on Succession in respect of Treaties, Document A/CN.4/214 and ADD.1* AND 2, p. 48 (1969)……...11, 12

John Westlake, *Chapters on the Principles of International Law* (1894)…….....2

Johst Wilmanns, "Note," 9 Encyclopedia of Public International Law 287 (1986)……...16

Letter confirming telephone conversation with U.S. State Department relating to arbitral proceedings at the Permanent Court of Arbitration, 3 Mar. 2000, (http://hawaiiankingdom.org/pdf/State_Dpt_Ltr_(3.3.2000).pdf).....14

Permanent Court of Arbitration, Annex 2 from the 2011 Annual Report (online at https://docs.pca-cpa.org/2015/12/PCA-annual-report-2011.pdf).....13

Permanent Court of Arbitration website, Case Repository, PCA Case no. 1999-01, Larsen v. Hawaiian Kingdom (https://pca-cpa.org/en/cases/35/).....13

United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai'i: 1894-95 (1895)……..3, 4, 5

U.S. Secretary of State Calhoun to Hawaiian Commissioners (July 6, 1844) (online at: https://hawaiiankingdom.org/pdf/US_Recognition.pdf).....10

Violations of the Laws and Customs of War, Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities, Conference of Paris, 1919, Annex, TNA FO 608/245/4…….....25

INTERESTS OF *AMICI CURIAE*

Amici curiae, Minister Dr. David Keanu Sai, Ph.D., and Professor Federico Lenzerini, Ph.D., international scholars whose views are represented in this brief, along with attesting *amici curiae* Professors Prabhakar Singh, Ph.D., and Alfred de Zayas, Ph.D., have expertise in public international law, international human rights, international humanitarian law, and international norms regarding statehood and sovereignty, self-determination and the rule of law. The remaining *amici* have joined solely representing themselves as doctoral degree recipients that understand the highest level of academic and legal research, and attest the *amici* brief to be factual and true. *Amici* are from eleven countries—France, Germany, Hawaiian Kingdom, India, Italy, Japan, Palestine, Philippines, Solomon Islands, Switzerland, and the United States. All *amici* have an interest in ensuring an informed interpretation by the Court of the consequences that international humanitarian law, the law of occupation, and international criminal law have on its jurisdiction. Enclosed, as Exhibit 1, are the biographies of the *amici curiae*. Defendant Kamehameha Schools has consented to the filing of the *amici* brief. Plaintiff did originally consent to filing of the *amici* brief, but later denied consent, on a basis *amici curiae* contend is unsupported by law.

INTRODUCTION

The purpose of this brief is to bring to this Court's attention the impact that international law brings upon its jurisdiction as an Article III court and why an Article II occupation court,[1] as a regularly constituted court, would have jurisdiction in accordance with international law, legal obligations, and judicial precedent. According to Bederman, "twelve Article II courts [were established] in the history of the United States for which some record—no matter how sparse—has remained. [T]hey all share one thing in common: they were each constituted by the armed forces of the United States occupying territory captured from an enemy."[2]

In assessing the legality of the continued existence of the Hawaiian Kingdom, as a State under international law, the Court should be cognizant of customary international law, international humanitarian law, and international human rights treaties that are incorporated into United States domestic law by virtue of Article VI, section 2 of the U.S. Constitution, also referred to as the *Supremacy Clause*. International law, which includes treaties ratified by the United States as well as customary international law—grounded on *opinio juris*—is a part of U.S. law and must be faithfully executed by the President and enforced by U.S. courts.[3]

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[1] David J. Bederman, "Article II Courts," 44 *Mercer L. Rev.* 825 (1992-1993).
[2] *Id*., 837.
[3] *See The Paquete Habana*, 175 U.S. 677, 700 (1900).

The question here is not whether an Article III court, under the U.S. Constitution, can sit within the territory of a foreign State without its consent. Rather the question is whether this Court, as an Article II occupation court, can sit within the territory of a foreign State—the Hawaiian Kingdom—without its consent, and consequently possesses jurisdiction over this case as a regularly constituted court. The answer to the first question is "no," because of the territorial limits of the U.S. Constitution,[4] but the answer to the second question is "yes."

ARGUMENT

I. THIS COURT IS NOT REGULARLY CONSTITUDED BECAUSE THE HAWAIIAN KINGDOM CONTINUES TO EXIST AS A STATE UNDER INTERNATIONAL LAW

A. *The Existence of the Hawaiian Kingdom as an independent State since the Nineteenth Century*

To quote the *dictum* of the *Larsen v. Hawaiian Kingdom* arbitral tribunal's award in 2001 at the Permanent Court of Arbitration, "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."[5] According to Westlake, in 1894, the Family of Nations comprised, "[f]irst, all

[4] *See United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936), and *The Apollon*, 22 U.S. 362, 370 (1824).
[5] Larsen v. Hawaiian Kingdom, 119 *International Law Reports* 566, 581 (2001).

European States [...] Secondly, all American States [...] Thirdly, a few Christian States in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free State."[6]

On January 16, 1893, under orders by U.S. Minister John Stevens, the city of Honolulu was invaded by a detachment of U.S. Marines "supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies."[7] This invasion coerced Queen Lili'uokalani, Executive Monarch of the Hawaiian Kingdom, to conditionally surrender to the superior military power of the U.S. forces, whereby she stated, "[n]ow, 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."[8]

President Cleveland initiated a presidential investigation on March 11, 1893, by appointing Special Commissioner James Blount to travel to the Hawaiian Islands and provide periodic reports to the U.S. Secretary of State Walter Gresham. His last

[6] John Westlake, *Chapters on the Principles of International Law* 81 (1894).
[7] United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 451 (1895).
[8] *Id*., 1039.

report was dated July 17, 1893,[9] and on October 18, 1893, Secretary of State Gresham notified the President, "[t]he Government of Hawaii surrendered its authority under a threat of war, until such time only as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign."[10]

On December 18, 1893, President Cleveland delivered a *manifesto* to the Congress on his investigation. The President concluded that the "military occupation of Honolulu by the United States […] was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property."[11] He also determined that the provisional government was "neither a government *de facto* nor *de jure*,"[12] because "it owes its existence to an armed invasion by the United States."[13] By this conclusion he branded the provisional government a puppet government of the United States. He also concluded that the United States committed "act[s] of war" against the Hawaiian Kingdom.[14]

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[9] *Id*., 567.
[10] *Id*., 462.
[11] *Id*., 452.
[12] *Id*., 453.
[13] *Id*., 454.
[14] *Id*., 451; see also 18 U.S. Code §2331(4).

Through executive mediation between the Queen and the new U.S. Minister to the Hawaiian Islands, Albert Willis, that lasted from November 13 through December 18, 1893, an agreement of peace was reached.[15] According to the executive agreement, by exchange of notes, the President committed to restoring the Queen as the constitutional sovereign, and the Queen agreed, after being restored, to grant a full pardon to the insurgents. Political wrangling in the Congress, however, blocked President Cleveland from carrying out his obligation of restoration of the Queen and the insurgents were not granted a full pardon.

Five years later, at the height of the Spanish-American War, President Cleveland's successor, William McKinley, signed a congressional joint resolution of annexation on July 7, 1898, unilaterally seizing the Hawaiian Islands.[16] On April 30, 1900, the Congress transformed the U.S. puppet calling itself the Republic of Hawai‘i into the Territory of Hawai‘i, under *An Act To provide a government for the Territory of Hawaii*.[17] On March 18, 1959, the Congress transformed the Territory of Hawai‘i into the State of Hawai‘i by *An Act To provide for the admission of the State of Hawaii into the Union*.[18] These congressional acts have no extraterritorial effects.

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[15] *Id*., 1269.
[16] 30 Stat. 750 (1898).
[17] 31 Stat. 141 (1900).
[18] 73 Stat. 4 (1959).

In *United States v. Curtiss Wright Corp.*, the U.S. Supreme Court stated, "[n]either 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."[19] Therefore, the State of Hawai'i cannot claim to be a lawful government, because its only claim to authority derives from American legislation, which has no legal effect in the territory of the Hawaiian Kingdom. According to Professor Schabas, the imposition of the laws of the occupying State within the territory of the occupied State is the war crime of usurpation of sovereignty during occupation.[20]

In *The Lotus* case, the Permanent Court of International Justice stated that "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."[21] According to Judge Crawford, derogation of this principle will not be presumed.[22] Furthermore, as long as occupation continues, the United States cannot "annex the occupied territory, even

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[19] *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936); see also *The Apollon*, 22 U.S. 362, 370 (1824).
[20] William Schabas, "Legal Opinion on War Crimes Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893," 3 *Haw. J.L. & Pol.* 334, 340, 358 (2021).
[21] *Lotus*, PCIJ Series A, No. 10, 18 (1927)
[22] James Crawford, *The Creation of States in International Law* 41 (2nd ed., 2006).

if it occupies the whole of the territory concerned. A decision on that point can only be reached in the peace treaty. That is a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts."[23]

However, the law of belligerent occupation allows the State to exercise certain powers in the territory of other States. Referring to the American occupation of Hawai'i, Professor Dumberry states, "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 provides for the co-existence of two distinct legal orders, that of the occupier and the occupied.[24]

In its 1988 legal opinion, United States Department of Justice's Office of Legal Counsel ("OLC") concluded, it "is unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution,"[25] because only the President "has the authority to assert the United States's sovereignty over the extended territorial sea."[26] This legal opinion further stated that only "by means of

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[23] Jean S. Pictet, *Commentary—The Geneva Conventions of 12 August 1949* 275 (1958).
[24] 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); see also Article 43 of the 1907 Hague Regulations, 36 Stat. 2277 (1907).
[25] Douglas W. Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea," 12 *Office of Legal Counsel* 238, 252 (1988).
[26] *Id*.

treaties […] 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."[27] There has never been any treaty of cession of Hawaiian territory to the United States.

Despite the miliary overthrow of the Hawaiian Government, the Hawaiian Kingdom, as a State, continued to exist as a subject of international law. Thus, there is a distinction between the State and its government. On this subject, Judge Crawford explains, "[t]here 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."[28] Judge Crawford further concludes that "[b]elligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[29] According to Professor Craven, "[i]f 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."[30]

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[27] *Id*., 252.
[28] Crawford, 34.
[29] *Id*.
[30] Matthew Craven, "Continuity of the Hawaiian Kingdom as a State under International Law," in David Keanu Sai (ed.) *The Royal Commission of Inquiry:*

Evidence of a valid demonstration of legal title or sovereignty by the United States would be an international treaty, notably a peace treaty. 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*[31] and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain*.[32] There is no such treaty between the Hawaiian Kingdom and the United States. There only exists a congressional law, called a joint resolution of annexation, purporting to have annexed a foreign State in 1898.

B. *The Restoration of the Government of the Hawaiian Kingdom by a Council of Regency serving in the absence of an Executive Monarch*

In 1996, under the doctrine of necessity, remedial steps were taken to reinstate the Hawaiian Kingdom government, as it stood under its legal order, prior to the U.S. invasion and military overthrow of the Hawaiian Government.[33] In accordance with the Hawaiian Constitution and the doctrine of necessity, an *acting* Council of Regency was established to serve in the absence of the Executive Monarch. Following this process, an *acting* Government, comprised of officers *de facto*, was

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Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom 128 (2020).

[31] 9 Stat. 922 (1848).

[32] 30 Stat. 1754 (1898).

[33] Sai, *Royal Commission of Inquiry*, 18-23; see also Council of Regency, "Operational Plan for Transitioning the State of Hawai'i into a Military Government," 5 *Haw. J.L. & Pol.* 152-268 (2023).

established as the successor to Queen Lili‘uokalani, Hawai‘i’s last Executive Monarch.[34] The Queen died in 1917, without naming a successor in accordance with Hawaiian constitutional law, thereby leaving the constitutional office vacant.

There was no legal requirement for the Council of Regency, as the successor in office to the Queen under Hawaiian constitutional law, to obtain recognition from the United States as the restored government. The United States’ recognition of the Hawaiian Kingdom, as an independent State, on July 6, 1844,[35] was also the recognition of the Hawaiian Kingdom government—a Constitutional Monarchy. Successors in office to King Kamehameha III, who at the time of international recognition was King of the Hawaiian Kingdom, did not require diplomatic recognition. These successors included King Kamehameha IV in 1854, King Kamehameha V in 1863, King Lunalilo in 1873, King Kalākaua in 1874, Queen Lili‘uokalani in 1891, and the Council of Regency in 1997.

The legal doctrines of recognition of new governments only arise “with extra-legal changes in government” of an existing State.[36] Successors to King Kamehameha III were not established through “extra-legal changes,” but rather through the Constitution and laws of the Hawaiian Kingdom. According to United

[34] Lenzerini, *Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom*.
[35] U.S. Secretary of State Calhoun to Hawaiian Commissioners (July 6, 1844).
[36] M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice, 1815-1995* 26 (1997).

States foreign relations law, "[w]here a new administration succeeds to power in accordance with a state's constitutional processes, no issue of recognition or acceptance arises; continued recognition is assumed."[37]

C. *Successor States to Hawaiian Kingdom Treaties*

The successor States of the Hawaiian Kingdom's treaty partners were not aware at the time of their independence that the Hawaiian Kingdom continued to exist as a State; therefore, neither the newly independent States nor the Hawaiian Kingdom could declare "within a reasonable time after the attaining of independence, that the treaty is regarded as no longer in force between them."[38] Until there is a clarification of the successor States' intentions, as to a common understanding with the Hawaiian Kingdom, it shall presume the continuance in force of its treaties with the successor States. This position, taken by the Hawaiian Kingdom, is consistent with Article 24 of the 1978 Vienna Convention on Succession of States in respect of Treaties.

Since successor States, which include Member States of the United Nations, were unaware of the existence of the Hawaiian Kingdom at the time of their independence, and of its treaties with their predecessor States, Article 24(1)(a) and (b) could not apply. Therefore, under customary international law, in the absence of

[37] *Restatement (Third)*, §203, comment c.
[38] Humphrey Waldock, Special Rapporteur, Second Report on Succession in respect of Treaties, Document A/CN.4/214 and ADD.1* AND 2, p. 48 (1969).

an express agreement or an agreement by conduct, the Hawaiian Kingdom will presume that its treaties continue to be in force, for two years[39] from when the successor State is made aware of the Hawaiian Kingdom's continued existence.[40] The Hawaiian Kingdom currently has treaties with 92 Member States of the United Nations, of which 12 treaties are with the original States, and 80 treaties are with their successor States.

D. *Larsen v. Hawaiian Kingdom at the Permanent Court of Arbitration*

In the *Larsen v. Hawaiian Kingdom* at the Permanent Court (1999-2001), Minister Dr. David Keanu Sai served as Lead Agent for the Council of Regency representing the Hawaiian Kingdom. As such, Minister Dr. Sai was in communication with the Permanent Court's Principal Legal Counsel, Ms. Bette Shifman, whose responsibility was to determine whether the Hawaiian Kingdom exists as a State in continuity since the nineteenth century. This determination was necessary for establishing the Permanent Court's institutional jurisdiction in accordance with Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes.[41] Article 47 provides, "[t]he jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to

[39] *Id.*, 63-66.

[41] 36 Stat. 2199 (1907).

disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal."

By March of 2000, the Secretariat determined that the Hawaiian Kingdom had met the standing of a State and was thus recognized as a non-Contracting Power, pursuant to Article 47. This fact is noted in Annex 2—*Cases Conducted under the Auspices of the PCA or with the Cooperation of the International Bureau* in the Permanent Court's Annual Reports from 2000 to 2011.[42] The Permanent Court also recognized the Council of Regency as the Hawaiian Kingdom's government. In these Annual Reports, it identifies *Larsen v. Hawaiian Kingdom* as the thirty-third case that came under the auspices of the Permanent Court. Since 2012, the Annual Reports no longer include Annex 2 because the Permanent Court's website provides the list of cases, which includes *Larsen v. Hawaiian Kingdom*, Case no. 1999-01.[43] The dispute was that Larsen was alleging that the Council of Regency was liable for "allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom."[44] Like Larsen, the Defendant Kamehameha Schools is being subjected to "the unlawful imposition of American municipal laws."

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[42] Permanent Court of Arbitration, Annex 2 from the 2011 Annual Report.
[43] Permanent Court of Arbitration website, Case Repository, PCA Case no. 1999-01, *Larsen v. Hawaiian Kingdom*.
[44] *Id*.

Before the arbitral tribunal was formed on June 9, 2000, Mr. Tjaco T. van den Hout, Secretary General of the Permanent Court, spoke with Minister Dr. Sai, in his capacity as the Lead Agent for the Hawaiian Kingdom. During this telephone conversation in February of 2000, the Secretary General recommended that the Hawaiian Government provide an invitation to the United States to join in the arbitration. The Hawaiian Government agreed with this recommendation, which resulted in a conference call meeting on March 3, 2000, in Washington, D.C., between Minister Dr. Sai, Larsen's counsel, Ms. Ninia Parks, and John Crook from the U.S. Department of State.

The meeting was reduced to a formal diplomatic note and mailed to Mr. Crook in his capacity as legal adviser to the State Department, and a copy of the note was submitted, by the Council of Regency, to the Permanent Court's Secretariat for a record that the United States was invited to join in the arbitral proceedings.[45] The note was signed by Minister Dr. Sai, as "Acting Minister of Interior and Agent for the Hawaiian Kingdom." Under international law, this note served as an offering instrument.

Thereafter, the Permanent Court's Deputy Secretary General, Phyllis Hamilton, informed Minister Dr. Sai that the United States, through its embassy in

[45] Letter confirming telephone conversation with U.S. State Department relating to arbitral proceedings at the Permanent Court of Arbitration, 3 Mar. 2000.

The Hague, notified the Permanent Court, by note verbale, that the United States declined the invitation to join the arbitral proceedings. Instead, the United States requested permission from the Hawaiian Government to have access to the pleadings and records of the case. Both the Hawaiian Government and Larsen consented to this request. The Permanent Court, represented by the Deputy Secretary General, served as an intermediary to secure an agreement between the Hawaiian Kingdom and the United States. This executive agreement, by exchange of notes, is known as the 2000 Sai-Clinton agreement.

The United States' request to have access to the arbitral records, in lieu of the invitation to join in the arbitration, and the Hawaiian government's consent to that request, constitutes an international agreement by exchange of notes. According to Professor Assche, "the exchange of two notes verbales constituting an agreement satisfies the definition of the term 'treaty' as provided by Article 2(1)(a) of the Vienna Convention."[46] Together, the exchange of notes on this subject matter, between the Hawaiian Kingdom, the Permanent Court, and the United States, constitutes a multilateral agreement of explicit recognition of the restored Hawaiian Government.

[46] Cendric van Assche, "1969 Vienna Convention," *The Vienna Conventions on the Law of Treaties, A Commentary*, Vol. I, Corten & Klein, eds., vol. 1 261 (2011).

According to Wilmanns, "[l]egally there is no difference between a formal note, a note verbale and a memorandum. They are all communications which become legally operative upon the arrival at the addressee. The legal effects depend on the substance of the note, which may relate to any field of international relations."[47]

Coincident with the 2000 Sai-Clinton agreement is the recognition of the Council of Regency as an interim government. This coincidence of recognition stemming from an executive agreement was at the center of *United States v. Belmont*,[48] called the 1933 Roosevelt-Litvinov agreement, the U.S. Supreme Court stated, "[w]e take judicial notice of the fact that, coincident with the assignment set forth in the complaint, the President recognized the Soviet Government. [...] The assignment was effected by an exchange of diplomatic correspondence between the Soviet Government and the United States."[49] Like the assignment being effected by the 1933 Roosevelt-Litvinov agreement, the permission for the United States to access all records and pleadings in the *Larsen* case was effected by the 2000 Sai-Clinton agreement.[50]

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[47] Johst Wilmanns, "Note," 9 *Encyclopedia of Public International Law* 287 (1986).
[48] 301 U.S. 324, 330 (1937).
[49] *Id*., 326.
[50] *See* Restatement (Third), §303(4); see also *Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2084-96 (2015).

Under civil law, the juridical fact of the Hawaiian Kingdom's existence as a State produced the legal effect for the International Bureau, under the auspices of the Permanent Court, by virtue of Article 47, to perform the juridical act of accepting the dispute. According to Professor Lenzerini, this juridical act "may be compared—mutatis mutandis—to a juridical act of a domestic judge recognizing a juridical fact (e.g. filiation) which is productive of certain legal effects arising from it according to law."[51] Since members States of the Permanent Court's Administrative Council, which include the United States, furnish the Council and all Contracting States with an Annual Report, this represents "State practice [that] covers an act or statement by [...] State[s] from which views can be inferred about international law," and it "can also include omissions and silence on the part of States."[52]

Since the United States, and all Contracting States, did not object to the International Bureau's juridical act of acknowledging the Hawaiian Kingdom's existence as a non-Contracting State, this reflects the practice of States—and, at the same time, *opinio juris*. Furthermore, the Secretariat and the Administrative Council are treaty-based components of an intergovernmental organization comprised of representatives of States, and, therefore, "their practice is best regarded as the

[51] Lenzerini, *Memorandum of Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration* 3 (Dec. 5, 2021).
[52] Michael Akehurst, "Custom as a Source of International Law," 47(1) *Brit. Y.B. Int'l L.* 10 (1975).

practice of States."[53] According to Professor Lenzerini, "it may be convincingly held that the PCA contracting parties actually agreed with the recognition of the juridical fact of the Hawaiian Kingdom as a State carried out by the International Bureau."[54] Of the 193 Member States of the United Nations, 129 of these States are also Member States of the Permanent Court. Hence, by virtue of their membership, as Contracting States of the Permanent Court, these States already recognized the Hawaiian Kingdom as a State and the Council of Regency as its Government. Together with the Hawaiian Kingdom treaty partners and their successor States, 185 of these States are members of the United Nations, which has a current membership of 193 States.

II. THE LORENZO PRINCIPLE

On the 100th anniversary of the unlawful overthrow of the government of the Hawaiian Kingdom, the Ninth Circuit Court of Appeals was the first U.S. court to address a claim that United States courts do not have jurisdiction over the defendants because of the illegal overthrow of the Hawaiian government on January 17, 1893. In *United States v. Lorenzo*,[55] the Court held that "[a]ppellants Brown and Lorenzo contend that they are Hawaiian nationals and therefore the federal district court had

[53] *Id*., 11.
[54] Lenzerini, *Civil Law on Juridical Fact*, 4.
[55] *United States v. Lorenzo,* 995 F.2d 1448, *1455; 1993 U.S. App. LEXIS 10548, 19-20

no jurisdiction to hear this case. [However], [t]he appellants have presented no evidence that the Sovereign Kingdom of Hawaii is currently recognized by the federal government […].”

In *State of Hawai‘i v. Lorenzo*,[56] the same challenge came before the Intermediate Court of Appeals. This Court considered “Lorenzo[’s] appeal[], arguing that the lower court erred in denying his pretrial motion (Motion) to dismiss the indictment. The essence of the Motion is that the [Hawaiian Kingdom] was recognized as an independent sovereign nation by the United States in numerous bilateral treaties; the Kingdom was illegally overthrown in 1893 with the assistance of the United States; the Kingdom still exists as a sovereign nation; he is a citizen of the Kingdom; therefore, the courts of the State of Hawai‘i have no jurisdiction over him. Lorenzo makes the same argument on appeal.”[57] “Consequently, it was incumbent on Defendant to present evidence supporting his claim. *United States v. Lorenzo*. 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.”[58]

Notwithstanding the evidentiary burden placed upon Lorenzo, the Appellate Court admitted that “[t]he illegal overthrow leaves open the question whether the

[56] *State of Hawai‘i v. Lorenzo*, 77 Haw. 219, 883 P.2d 641 (App. 1994).
[57] *Id*., 220; 642.
[58] *Id*., 221; 643-644.

present governance system should be recognized,"[59] because there is an obligation under international law "not to recognize or treat as a state an entity that has attained the qualifications for statehood as a result of a threat or use of armed force […]."[60]

In *Lorenzo*, while citing *United States v. Lorenzo*, the Appellate Court created an evidentiary standard for defendants to meet who argue the State of Hawai'i courts lack jurisdiction because of the overthrow of the government of the Hawaiian Kingdom in 1893. The Appellate Court also did not foreclose this evidentiary burden in *State of Hawai'i v. Lee*,[61] when referencing *Lorenzo* ("it is an open legal question whether the 'Kingdom of Hawai'i' still exists."). In 2014, the Supreme Court, in *State of Hawai'i v. Armitage*,[62] clarified the evidentiary burden that *Lorenzo* placed upon defendants, "Lorenzo held that, for jurisdictional purposes, should a defendant demonstrate a factual or legal basis that the Kingdom of Hawai'i "exists as a state in accordance with recognized attributes of a state's sovereign nature[,]" and that he or she is a citizen of that sovereign state, a defendant may be able to argue that the courts of the State of Hawai'i lack jurisdiction over him or her."[63]

Since 1994, *Lorenzo* became a precedent case at the trial court level for denying defendants' motions to dismiss because they provided no evidence of "a

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[59] *Id*., note 2.
[60] *Id*.
[61] *State of Hawai'i v. Lee*, 90 Haw. 130, 142; 976 P.2d 444, 456 (App. 1999).
[62] *State of Hawai'i v. Armitage*, 132 Haw. 36 (2014).
[63] *Id*., 60.

factual or legal basis that the Kingdom of Hawai‘i ‘exists as a state in accordance with recognized attributes of a state's sovereign nature.'" If these decisions went to appeal, the Intermediate Court of Appeals have always affirmed the trial court's decision pursuant to *Lorenzo*.

In 2002, Chief U.S. District Judge David Ezra, in *United States v. Goo*,[64] acknowledged the *Lorenzo* precedent as the *Lorenzo* principle, "[t]he court finds that Defendant has failed to provide any viable legal or factual support for his claim that as a citizen of the Kingdom he is not subject to the jurisdiction of the courts. Since the Intermediate Court of Appeals for the State of Hawaii's decision in *Hawaii v. Lorenzo*, the courts in Hawaii have consistently adhered to the *Lorenzo* court's statements that the Kingdom of Hawaii is not recognized as a sovereign state by either the United States or the State of Hawaii. See *Lorenzo* ; see also *State of Hawaii v. French* (stating that "presently there is no factual (or legal) basis for concluding that the [Hawaiian] Kingdom exists as a state in accordance with recognizing attributes of a state's sovereign nature") (quoting *Lorenzo*). This court sees no reason why it should not adhere to the *Lorenzo* principle."[65] A principle is a "settled rule of action, procedure, or legal determination."[66] The *Lorenzo* principle precludes this Court from invoking the political question doctrine.

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[64] *United States v. Goo*, 2002 U.S. Dist. LEXIS 2919.
[65] *Id*. 3-4 (internal citations omitted).
[66] *Black's Law Dictionary* 1193 (6th ed., 1990).

Therefore, the *amici curiae*, pursuant to the *Lorenzo* principle, have presented a factual and legal basis "for concluding that the Hawaiian Kingdom [continues to exist] as a state in accordance with recognizing attributes of a state's sovereign nature," and that, pursuant to *United States v. Lorenzo*, the Hawaiian Kingdom is "currently recognized by the federal government" by virtue, *inter alia*, of the 2000 Sai-Clinton agreement.

III. WHAT CONSTITUTES A REGULARLY CONSTITUTED COURT

The underpinnings of a court's jurisdiction is its locale within the sovereign territory of an independent State. As an Article III court, this Court presumes it is within the territory of the United States. But under international law and the limitation of U.S. law, that presumption is rebutted.

According to Common Article 3 of the four Geneva Conventions on international humanitarian law of 1949, para. 1(d,) it is "prohibited at any time and in any place whatsoever […] the passing of sentences […] without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

The subject of jurisdiction of a U.S. court, under international law, came before the U.S. Supreme Court, in *Hamden v. Rumsfeld*,[67] as Common Article 3

[67] 548 U.S. 557, 631 (2006).

"requires that Hamdan be tried by a 'regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.' [citation omitted] While the term 'regularly constituted court' is not specifically defined in either Common Article 3 or its accompanying commentary, other sources disclose its core meaning. The commentary accompanying a provision of the Fourth Geneva Convention, for example, defines 'regularly constituted' tribunals to include 'ordinary military courts' and 'definitely exclud[e] all special tribunals.' GCIV Commentary 340 (defining the term 'properly constituted' in Article 66, which the commentary treats as identical to 'regularly constituted')." Article 75(4) of the Additional Protocol I of 1977 requires that "[n]o sentence may be passed [except] by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure."

Furthermore, the International Covenant on Political Rights, the Convention on the Rights of the Child and the regional Human Rights Conventions provide that for a trial to be fair it must be conducted by a court that is "independent" and "impartial," all reiterating a principle that can indisputably be considered as enshrined in a rule of customary international law. The legal system for this Court to "be set up in accordance with the recognized principles governing the administration of justice" is the Hawaiian Kingdom's legal system and not the U.S. legal system, which has no extraterritorial effects.

This Court, however, can be regularly constituted as an Article II occupation court, which is fully covered in the *amici curiae* brief [Doc. 96] filed with this Court in *Hawaiian Kingdom v. Biden et al.*, case 1:21-cv-00243-LEK-RT, by the International Association of Democratic Lawyers, the National Lawyers Guild, and the Water Protector Legal Collective [Doc. 96]. Magistrate Judge Rom Trader granted request of *amici* to file their brief [Doc. 90]. Currently, this Court is not regularly constituted. Therefore, to have jurisdiction, the Court must transform itself into an Article II occupation Court per *amici* brief [Doc. 96]. This Court should not be guided by the U.S. Constitution, but rather by international humanitarian law and the 1949 Fourth Geneva Convention.[68]

IV. WAR CRIMES OF USURPATION OF SOVEREIGNTY DURING OCCUPATION AND DEPRIVATION OF FAIR AND REGULAR TRIAL

Since 1898, when the United States began to usurp its authority by imposing its legislation and administrative measures within Hawaiian territory, much has evolved in customary international law. In particular, usurpation of sovereignty was declared as a war crime by the *Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties* established at the Paris Peace Conference in 1919 in the aftermath of the First World War, of which the U.S. was a member.

[68] 6.3 U.S.T. 3516 (1955).

The Commission provided examples of the war crime of usurpation of sovereignty during the First World War that bore a striking resemblance to the American occupation of Hawai‘i. In the case of the occupation of the Serbian State, "Serbian law, courts and administration [were] ousted"[69] by Bulgaria, and taxes were "collected under [the] Bulgarian fiscal regime [and not the Serbian fiscal regime]." Another example the Commission provided was when "Austrians suspended many Serbian laws and substituted their own, especially in penal matters, in procedure, judicial organization, etc."[70]

According to Professor Schabas, usurpation of sovereignty is recognized as a war crime under customary international law.[71] He states that "[i]n the situation of Hawai‘i, the usurpation of sovereignty would appear to have been total since the beginning of the twentieth century,"[72] and that it is not an instantaneous act or event, but rather a continuous offense that "consists of discrete acts."[73] As such, the *actus reus* of the offense of usurpation of sovereignty occurs where the "perpetrator imposed or applied legislative or administrative measures of the occupying power

[69] *Violations of the Laws and Customs of War, Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities*, Conference of Paris, 1919, Annex, TNA FO 608/245/4.
[70] *Id*.
[71] Schabas, 334, 340.
[72] *Id*., 342.
[73] *Id*.

going beyond those required by what is necessary for military purposes of the occupation."[74]

And the *mens rea* would consist of the fact that the "perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation."[75] Furthermore, "there is no requirement for a legal evaluation by the perpetrator," explains Professor Schabas, "as to the existence of an armed conflict or its character as international or non-international. In that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international [but] […] only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict."[76]

Under Article 147 of the Fourth Geneva Convention, depriving a protected person of fair and regular trial is a grave breach or war crime. The defendant Kamehameha Schools is a protected person under the laws of the Hawaiian Kingdom. To be criminally culpable for this war crime, "[t]he perpetrator deprived one or more persons in an occupied territory of fair and regular trial by denying judicial guarantees recognized under international law, including those of the fourth

[74] *Id*., 358.
[75] *Id*.
[76] *Id*., 357.

Geneva Convention and the International Covenant on Civil and Political Rights,"[77] and the "perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation."[78]

According to U.S. Supreme Court Justice Kennedy, in *Hamdan v. Rumsfeld*, there was no need to determine whether or not detainees received a fair trial by the military commissions [Article II courts] in Guantanamo Bay, because they were not regularly constituted in the first place. Justice Kennedy reasoned that the fairness of a trial is a moot point, since the Court already found that "the military commissions […] fail to be regularly constituted under Common Article 3."[79] Depriving the defendant Kamehameha Schools, being a protected person, of a fair and regular trial is a grave breach under the Fourth Geneva Convention and under Additional Protocol I. It is also listed as a war crime in the Statutes of the International Criminal Court, of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda and of the Special Court for Sierra Leone.

What was once recognized as a delict or violation of international law by the State in 1898 has risen today to the level of an international crime where criminal culpability falls upon persons. In the words of the International Military Tribunal, "crimes against international law are committed by men, not by abstract entities, and

[77] *Id*., 359.
[78] *Id*.
[79] *Hamdan v. Rumsfeld*, 655.

only by punishing individuals who commit such crimes can the provisions of international law be enforced."[80]

CONCLUSION

For the foregoing reasons, *amici* request that the Court consider U.S. obligations under international law, when sitting in the territory of an occupied State, in evaluating the prolonged occupation of the Hawaiian Kingdom since 1893. The *amici* urge the Court to also evaluate the *amici curiae* brief filed by the International Association of Democratic Lawyers, the National Lawyers Guild, and the Water Protector Legal Collective, which is enclosed herein as Exhibit 2, so as to enhance its own understanding of why the Court must transform itself from an Article III court to an Article II occupation court.

Dated: September 2, 2026

Respectfully submitted,

/s/ Minister Dr. David Keanu Sai, Ph.D.

/s/ Minister Kauʻi P. Sai-Dudoit

/s/ Attorney General Dexter Keʻeaumoku Kaʻiama, J.D.

/s/ Professor Federico Lenzerini, Ph.D.

/s/ Professor Prabhakar Singh, Ph.D.

[80] *France et al. v. Göring et al.*, 22 IMT 411, 466 (1948).

/s/ Professor Alfred de Zayas, Ph.D.

/s/ Professor Keiki Kawai‘ae‘a, Ph.D.

/s/ Professor Debora Halbert, Ph.D., J.D.

/s/ Professor Jonathan Kay Kamakawiwo‘ole Osorio, Ph.D.

/s/ Professor Peter Kalawai‘a Moore, Ph.D.

/s/ Professor Ty Kāwika Tengan, Ph.D.

/s/ Professor Candace Fujikane, Ph.D.

/s/ Professor Alethea Ku‘ulei KD Serna, Ph.D.

/s/ Professor Tēvita O. Ka‘ili, Ph.D.

/s/ Professor Erin Kahunawaika‘ala Wright, Ph.D.

/s/ Professor Noa Kekuewa Lincoln, Ph.D.

/s/ Professor Monisha Das Gupta, Ph.D.

/s/ Professor Deborah Zuercher, Ph.D.

/s/ Professor Kealalōkahi Clarke Losch, Ed.D.

/s/ Professor T. Ku‘uipo Losch, Ed.D.

/s/ Professor Houchang E. Chehabi, Ph.D.

/s/ Professor Michael Shapiro, Ph.D.

/s/ Professor M. Puakea Nogelmeier, Ph.D.

/s/ Professor Ibrahim G. Aoudé, Ph.D.

/s/ Professor Virginia Metaxas, Ph.D.

/s/ Professor Catherine E. Hoyser, Ph.D.

/s/ Professor Carol S. Austad, Ph.D.

/s/ Professor Pascal Lottaz, Ph.D.

/s/ Professor Masahide Kato, Ph.D.

/s/ Professor Dean Itsuji Saranillio, Ph.D.

/s/ Professor Iokepa Casumbal-Salazar, Ph.D.

/s/ Professor Wendell "Kekailoa" Perry, Ph.D., J.D.

/s/ Professor Noelani Iokepa-Guerrero, Ed.D.

/s/ Professor Ngoc Phan, Ph.D.

/s/ Professor Keolu Fox, Ph.D.

/s/ Professor Hiapokeikikāne K. Perreira, Ph.D,

/s/ Professor Rachel L. Burrage, Ph.D., M.S.W.

/s/ Professor Jamaica Heolimeleikalani Osorio, Ph.D.

/s/ Professor Derek Taira, Ph.D.

/s/ Professor Bryan Kuwada, Ph.D.

/s/ Professor Jérémy Lemarié, Ph.D.

/s/ Professor Ryan Buyco, Ph.D.

/s/ Professor Mary-Lindsey Kalikolani Correa, Ph.D.

/s/ Professor Stacy M.T. Potes, Ph.D.

/s/ Professor Kyle Kajihiro, Ph.D.

/s/ Professor Joseph D. Foukona, Ph.D.

/s/ Professor Matthew Kekoa Lau, Ph.D.

/s/ Professor Felix Mantz, Ph.D.

/s/ Professor Debbie Samaniego, Ph.D.

/s/ Professor Manulani Aluli Meyer, Ed.D.

/s/ Dr. Lorenz Gonschor, Ph.D.

/s/ Dr. Unique Shaw-Dismuke, Ph.D.

/s/ Dr. Kimo Alexander Cashman, Ph.D.

/s/ Dr. Federico Magdalena, Ph.D.

/s/ Dr. Anthony Castanha, Ph.D.

/s/ Dr. Willy Kauai, Ph.D.

/s/ Dr. Brandi Jean Nālani Balutski, Ph.D.

/s/ Dr. Gary Kalehua Krug, Ph.D.

/s/ Dr. Richard Keao NeSmith, Ph.D.

/s/ Dr. Lynette Cruz, Ph.D.

/s/ Dr. Patricia Gozemba, Ed.D.

/s/ Dr. Kamana‘opono M. Crabbe, Ph.D.

/s/ Dr. M. Noe Noe Wong-Wilson, Ph.D.

/s/ Dr. Toni Bissen, Ed.D.

/s/ Dr. Tammie Noelani Perreira, Psy.D.

/s/ Dr. Kū Kahakalau, Ph.D.

/s/ Dr. Douglas Herman, Ph.D.

/s/ Dr. Ronald Williams Jr., Ph.D.

/s/ Dr. William C. “Kalamakūonālani” Rezentes, III, Ph.D.

/s/ Dr. Chase J.H. Wiggins, Ed.D.

/s/ Edward Halealoha Ayau
LAW OFFICE OF EDWARD
HALEALOHA AYAU
Counsel for Amici Curiae

Exhibit “1”

BIOGRAPHIES OF THE *AMICI CURIAE*

Minister Dr. David Keanu Sai, Ph.D., is a Senior Lecturer in Hawaiian Studies and Political Science at the University of Hawai‘i Windward Community College, and an Affiliate Faculty member at the University of Hawai‘i at Mānoa College of Education graduate program. He specializes in international relations and law with particular focus and academic publications on the Hawaiian Kingdom's continued existence as an occupied State under international law.[1] He served as lead agent for

[1] David Keanu Sai, *The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State* (2008) (Ph.D. dissertation, University of Hawai‘i at Mānoa) (online at https://hawaiiankingdom.org/pdf/Dissertation_(Sai).pdf); David Keanu Sai, "A Slippery Path Toward Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and its Use and Practice Today," 10 *J. L. & Social Challenges* 68-133 (2008) (online at https://hawaiiankingdom.org/pdf/Slippery_Path_10JLSocChallenges68_(Sai).pdf); David Keanu Sai (ed.) *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (2020) (online at https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf); David Keanu Sai, "All States have a Responsibility to Protect their Population from War Crimes—Usurpation of Sovereignty During Military Occupation of the Hawaiian Islands," 6(2) *Int'l Rev. Contemp. L.* 72-81 (2024) (online at https://hawaiiankingdom.org/pdf/IRCL_Article_(Sai).pdf); David Keanu Sai, "Hawai‘i's Sovereignty and Survival in the Age of Empire," in H.E. Chehabi & David Motadel (eds.) *Unconquered States: Non-European Powers in the Imperial Age* 468- (2024) (online at https://hawaiiankingdom.org/pdf/Hawaii_Sovereignty_and_Survival_(Sai).pdf); and David Keanu Sai, "Hawaiian Neutrality from the Nineteenth Century to the Present," in Pascal Lottaz, Hillary Briffa, Eric Golson, and Naman Karl-Thomas (eds.) *Neutrality Actors in History: Global Case Studies from the 19th and 20th Centuries* (forthcoming Bloomsbury London, 2026) (online at https://hawaiiankingdom.org/pdf/Hawaiian_Neutrality_(Sai).pdf).

the Hawaiian Kingdom, in *Larsen v. Hawaiian Kingdom*, case no. 1999-01, at the Permanent Court of Arbitration, The Hague, Netherlands. Dr. Sai received his Ph.D. and M.A. degrees in Political Science specializing in International Relations and Public Law from the University of Hawai‘i at Mānoa. Dr. Sai is also Chairman of the Hawaiian Kingdom’s *acting* Council of Regency and Head of the Hawaiian Kingdom Royal Commission of Inquiry. Dr. Sai is also President of the *Hawaiian Society of Law and Politics*, which publishes the *Hawaiian Journal of Law and Politics*. He is also a graduate of the Kamehameha Schools Kapālama.

Kau‘i P. Sai-Dudoit is *acting* Minister of Finance and member of the Hawaiian Kingdom’s *acting* Councl of Regency. She has been the director of the Hawaiian language newspaper project, *Ho‘olaupa‘i* and currently *He Aupuni Palapala*, and has worked to bring 114 years of Hawaiian knowledge back into contemporary spaces. As the Programs Director of Awaiaulu, she has built an online history resource for educators called Kīpapa Educator Resources.

Dexter Ke‘eaumoku Ka‘iama, J.D., is *acting* Attorney General and member of the Hawaiian Kingdom’s *acting* Councl of Regency. He received his J.D. degree from the University of Hawai‘i at Mānoa William S. Richardson School of Law.

Federico Lenzerini, Ph.D., is a Professor of International Law, Human Rights and International Organization at the University of Siena, Italy, Department of Political and International Sciences. He is also a professor at the L.L.M. Program in

Intercultural Human Rights of the St. Thomas University School of Law, Miami, United States, and Professor of the Tulane-Siena Summer School on International Law, Cultural Heritage and the Arts. He was a UNESCO consultant and Rapporteur of the Committee on the Rights of Indigenous Peoples of the International Law Association, and Rapporteur of the Committee on implementation of the Rights of Indigenous Peoples of the same Association. He is a member of the editorial boards of the *Italian Yearbook of International Law*, of the *Intercultural Human Rights Law Review* and of the *Cultural Heritage Law and Policy* series. Professor Lenzerini received his Doctor of Law degree from the University of Siena, Italy, and his Ph.D. degree in international law from the University of Bari, Italy.[2] He is also Deputy Head of the Hawaiian Kingdom Royal Commission of Inquiry.

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[2] Federico Lenzerini, *Reparations for Indigenous Peoples: International & Comparative Perspectives* (Oxford University Press, 2008); Federico Lenzerini, "International Human Rights Law and Self-Determination of Peoples Related to the United States Occupation of the Hawaiian Kingdom," in David Keanu Sai (ed.) *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 173-216 (2020); Federico Lenzerini, "Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom," 3 *Haw. J.L. & Pol.* 317-333 (2021) (online at https://hawaiiankingdom.org/pdf/3HawJLPol317_(Lenzerini).pdf); Federico Lenzerini, *Memorandum of Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration* (Dec. 5, 2021), Doc. 174-2, in *Hawaiian Kingdom v. Biden et al.*, case no. 1:21-cv-00243-LEK-RT (online at https://hawaiiankingdom.org/pdf/Lenzerini_Juridical_Fact_of_HK_and_Juridical_Act_of_PCA.pdf).

Prabhakar Singh, Ph.D., is Professor of International Law at BML Munjal University School of Law in Sidhrawali, Gurgaon district, Haryana, India. He is currently member of the Executive Council of the Asian Society of International Law and on international advisory panel of the American Law Institute's *Restatement of the Foreign Relations Law of the United States*. Professor Singh received his Ph.D. degree at the National University of Singapore, an LL.M. degree at the University of Barcelona, and received his B.A.LL.B. (Honors) degree at the National Law Institute University, a premier public law school located in Bhopal, Madhya Pradesh, India. Professor Singh is winner of the Asian Society of International Law's "Young Scholar award" (2019-2021) for his work on semi/non-colonialism and international law. Professor Singh has published over 30 journal articles, book chapters and book reviews. He is co-editor of *Critical International Law: Postrealism, Postcolonialism and Transnationalism*.[3] His fiction and poetry have appeared in the *Economic & Politically Weekly* (Mumbai), *The Bombay Review* and *Cafe Dissensus*.

Alfred de Zayas, Ph.D., is a Professor of International Law at the Geneva School of Diplomacy. Professor de Zayas studied history and law at Harvard, where he obtained his J.D. degree. He practiced corporate law with the New York law firm

[3] Prabhakar Singh and Benoît Mayer (eds.), *Critical International Law: Postrealism, Postcolonialism, and Transnationalism* (Oxford University Press, 2014).

Simpson Thacher and Bartlett and is a retired member of the New York and Florida Bar. He obtained his Ph.D. degree in History from the University of Göttingen in Germany. Professor de Zayas is a former United Nations Independent Expert on International Order and produced 14 reports to the Human Rights Council and the United Nations General Assembly.

Keiki Kawaiʻaeʻa, Ph.D., holds a M.A. degree in Curriculum and Instruction from the University of Hawaiʻi at Mānoa and a Ph.D. degree in Interdisciplinary Studies, Arts & Sciences with a specialization in Indigenous Education from Union Institute & University in Cincinnati, Ohio, United States. She is the Interim Vice Chancellor for Academic Affairs at the University of Hawaiʻi at Hilo. Before this appointment, she served as Director of Ka Haka ʻUla O Keʻelikōlani College of Hawaiian Language and the Hale Kuamoʻo Hawaiian Language Center, and as an Associate Professor of Hawaiian Studies. She is also the co-founder of the Ulukau Hawaiian Electronic Library.

Debora Halbert, Ph.D., J.D., is a Professor of Political Science at the University of Hawaiʻi at Mānoa where she teaches law, policy, and futures studies. Her areas of specialization include international political economy and intellectual property rights, including the intersection of intellectual property and indigenous knowledge. She has been involved in the evolving scholarship on Hawaiian

sovereignty as an advisor for dissertation research and in the context of indigenous futures thinking.

Jonathan Kay Kamakawiwoʻole Osorio, Ph.D., is a Professor in Hawaiian Studies at the University of Hawaiʻi at Mānoa Kamakūokalani Center for Hawaiian Studies. He is the former Dean of Hawaiʻinuiākea School of Hawaiian Knowledge at the University of Hawaiʻi at Mānoa. Professor Osorio received his Ph.D. degree in History at the University of Hawaiʻi at Mānoa.[4] He is also a graduate of the Kamehameha Schools Kapālama.

Peter "Kalawaiʻa" Moore, Ph.D., Professor of Hawaiian Studies, University of Hawaiʻi of Hawaiʻi Windward Community College. Professor Moore has an M.A. and a Ph.D. degree in Political Science from the University of Hawaiʻi at Mānoa. The title of his doctoral dissertation is "He Hawaiʻi Kākou: Conflicts and Continuities of History, Culture and Identity in Hawaiʻi." Professor Moore is a member of the *Hawaiian Society of Law and Politics* and Editor of the *Hawaiian Journal of Law and Politics*.[5]

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[4] Jonathan Kamakawiwoʻole Osorio, "Kuʻe and Kuʻokoʻa (Resistance and Independence): History, Law, and Other Faiths," 1 *Haw. J.L. & Pol.* 92-113 (2004).
[5] P. Kalawaiʻa Moore, "American Hegemonic Discourse in Hawaiʻi: Rhetorical Strategies in Support of American Control Over Hawaiʻi," 3 *Haw. J.L. & Pol.* 73-116 (2021); P. Kalawaiʻa Moore, "Native Hawaiian Indigenous Discourse: Contained Resistance to US Hegemony, Rejection of the Hawaiian Kingdom Nation-State," 4 *Haw. J.L. & Pol.* 76-132 (2022); Kalawaiʻa Moore, "Spectres of State: Illusory Reasoning and Misread of History and Politics in Opposition to the Hawaiian Kingdom Nation-State," 5 *Haw. J.L. & Pol.* 120-151 (2023).

Ty Kāwika Tengan, Ph.D., is a Professor of Ethnic Studies and Anthropology at the University of Hawai‘i at Mānoa. Author of *Native Men Remade: Gender and Nation in Contemporary Hawai‘i*,[6] he researches and teaches on Native Hawaiian and Pacific identities, politics, and research methodologies. Professor Tengan received his M.A. degree and Ph.D. degree in Anthropology from the University of Hawai‘i at Mānoa. He is also a graduate of the Kamehameha Schools Kapālama, where his wife and children also attended.

Candace Fujikane, Ph.D., is a Professor of English at the University of Hawai‘i at Mānoa English Department. She is the former Director of the English Graduate Program and the English Undergraduate Program. Professor Fujikane received her Ph.D. degree in English from the University of California, Berkeley. She teaches courses on Hawai‘i and Hawaiian literature in the context of Hawaiian political history.

Alethea Ku‘ulei KD Serna, Ph.D., is a Professor in the College of Education at the University of Hawai‘i at Mānoa. She served as a former Elementary Teacher Education Director and is currently the Interim Chair of the Special Education Department. Professor Serna is also the co-PI of a grant/research project titled I Pa‘a Ka Huewai Pawehe, addressing the health and well-being of kānaka maoli school-

[6] Ty P. Kāwika Tengan, *Native Men Remad: Gender and Nation in Contemporary Hawai‘i* (2008).

aged youth through culturally relevant social-emotional learning, trauma-informed care, health education, PE, and physical activity. The title of her doctoral dissertation was "Effects of Cultural Worldview Belief and the Achievement of Cultural Standards of Value on Self-esteem, Anxiety, and Adaptive Behaviors of Native Hawaiian Students." Her scholarship involves teacher education and advancing Hawaiian achievement and health. Professor Serna received her ME.d. in Mathematics Education and Ph.D. in Education from the University of Hawai'i at Mānoa. She is a graduate of the Kamehameha Schools Kapālama.

Tēvita O. Ka'ili, Ph.D., is a Professor of Anthropology and Cultural Sustainability and former dean of the Faculty of Culture, Language and Performing Arts at Brigham Young University Hawai'i. He authored *Marking Indigeneity: The Tongan Arts of Sociospatial Relations* (The University of Arizona Press, 2017) and is the current editor of *Pacific Studies*, a multidisciplinary journal devoted to the study of the peoples of the Pacific Islands. Professor Ka'ili specializes in the cultural-diplomatic practice of *tauhi vā*, or sustaining relations in cultural, national, diasporic, and transnational spaces. He is a strong advocate for Aboriginal, Native, and Indigenous cultures and rights. Professor Ka'ili received his M.A. and Ph.D. in sociocultural anthropology from the University of Washington in Seattle. His wife, Elizabeth Rago-Ka'ili, is Māori (Ngāti Hine).

Erin Kahunawaikaʻala Wright, Ph.D., is a Professor of Educational Administration at the University of Hawaiʻi at Mānoa. Professor Wright earned her B.A. degree in Hawaiian Studies and certificate in Ethnic Studies from the University of Hawaiʻi at Mānoa as well as her M.A. degree in Higher Education and Ph.D. degree in Education from the University of California Los Angeles. For over 20 years, Professor Wright has served as a higher education scholar-practitioner primarily working with Native Hawaiian and Pacific Islander students. Her scholarship examines the intersections of native identity, educational environments, and native nation-building which have resulted in academic publications, presentations, and keynotes, community-focused presentations and workshops, and grant funded educational programs. Professor Wright is also a graduate of the Kamehameha Schools Kapālama.

Noa Kekuewa Lincoln, Ph.D., is a Professor in the College of Tropical Agriculture and Human Resources at the University of Hawai'i at Mānoa. He received his Ph.D. degree from Stanford University in Interdisciplinary Resource Management and his B.S. degree from Yale University in Environmental Engineering. Professor Lincoln is the President and founder of Māla Kaluʻulu Cooperative, a working farm, and the production advisor and a board secretary of the Hawaiʻi ʻUlu Producers Cooperative, a farmer-owned business focused on the mid-tier value chain of several indigenous crops, including breadfruit. He is the co-

founder and Vice Chair of the community-based organization that owns and operates the Amy BH Greenwell Ethnobotanical Garden, which preserves rare native Hawaiian plants as well as traditional crop varieties. Professor Lincoln sits on numerous boards of community-based non-profits, such as ʻAina Momona, Ulu Mau Puanui, and the Association for Hawaiian ʻAwa, and governmental advisory boards, such as the Kaulunani Urban and Community Forestry Council. Professor Lincoln is also a graduate of the Kamehameha Schools Kapālama.

Monisha Das Gupta, Ph.D., is a Professor in Ethnic Studies at the University of Hawaiʻi at Mānoa. Professor Gupta studies migrant-led movements for social justice. She approaches this subject from a feminist and critical ethnic studies framework. Her research methods are qualitative. It has contributed to developing transnational feminist approaches to migration. Professor Gupta specializes in the South Asian diaspora in the United States, and, over time, her research interests in movements for labor, racial and gender justice have expanded to her working with many other ethnic groups. All her research is closely tied to community-based organizing. She involves graduate and advanced undergraduate students in her research. Her current research project focuses on anti-deportation organizing in the United States.

Deborah Zuercher, Ph.D., serves as a Professor of Curriculum Studies in the College of Education at the University of Hawaiʻi at Mānoa. She holds a Bachelor

of Arts from the University of Waterloo, Canada, as well as a Bachelor of Arts, a Master of Arts in Teaching, and a Doctorate in Curriculum Studies from Kent State University. As the Executive Founding Director of the PACMED Master's and PACDOC Ph.D. degree programs, Dr. Zuercher leads place-based and culturally responsive graduate initiatives spanning Hawai‘i, American Samoa, the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia (including Chuuk, Kosrae, Pohnpei, and Yap). Her academic contributions and leadership in regional educational equity have been recognized with numerous honors, including the College of Education Lifetime Achievement Award (2024), the University of Hawai‘i at Mānoa Diversity Enhancement Award (2020), and an International Fulbright Administrative Scholarship (2013).

Kealalōkahi Clarke Losch, Ed.D., is a Professor of Hawaiian & Pacific Islands Studies at Kapi‘olani Community College. Professor Losch earned advanced degrees in Pacific Islands Studies from the University of Hawai‘i at Mānoa as an East-West Center Graduate Degree Fellow and completed his Doctor of Education at the University of Southern California. Throughout his tenure, Dr. Losch has contributed to Hawaiian and Pacific Islands Studies curricula across the University of Hawai‘i system, including serving on the KCC and UH System Hawaiian, Asian, and Pacific Issues Focus Boards for over 14 years and co-authoring the proposal for the Associate in Arts in Hawaiian Studies degree offered on all UHCC campuses.

His leadership contributions include serving as the initial Program Coordinator for the Hawaiian Studies AA at Kapiʻolani Community college, being a founding member of the Pūkoʻa Council (the UH Systemwide Native Hawaiian Council), and co-founding the Kalāualani Council at Kapiʻolani Community College. Professor Losch's areas of expertise include pre-19th century aboriginal Hawaiian culture and identity; 19th-century Hawaiian Kingdom history and identity, particularly relating to hapahaole (aboriginal Hawaiian half-castes); the current revival and reestablishment of aboriginal Hawaiian and Māori tattoo traditions; indigenous and aboriginal leadership development; and island-based paradigms of sustainability. Dr. Losch has also served the broader academic community as a former Hawaiian-culture-based charter school board member and former Vice-President and Trustee of the Hawaiian Historical Society. Professor Losch is also a graduate of the Kamehameha Schools Kapālama.

T. Kuʻuipo Losch, Ed.D., is an Indigenous Native Hawaiian scholar-practitioner. Born and raised in Hawaiʻi, she is a Professor of Hawaiian Studies at Leeward Community College. A graduate of Kamehameha Schools, she also holds a Bachelor of Arts (BA) degree in Hawaiian Studies, a Master of Arts (MA) degree in Pacific Islands Studies, and an Education Doctorate (EdD) from the University of Hawaiʻi at Mānoa. Dr. Loschʻs research interests center on promoting culture-based education and indigenizing higher education to better serve Native Hawaiian

students. Dr. Losch represented the University of Hawai‘i President on the Native Hawaiian Education Council (NHEC), where she later served as chair until her term ended in spring 2021. She was instrumental in establishing the Associate of Arts in Hawaiian Studies degree, the first multi-campus degree in the University of Hawai‘i Community College System. As a member of Leeward’s Pūko‘a no nā ‘Ewa Council, she actively engages in discussions about the role of Hawaiian language, culture, and history in higher education for Native Hawaiians.

Houchang E. Chehabi, Ph.D., is a Professor Emeritus of International Relations and History at Boston University Frederick S. Pardee School of Global Studies. Professor Chehabi is one the editors of Oxford University Press London’s publication *Unconquered States: Non-European Powers in the Imperial Age* with a chapter on the Hawaiian Kingdom’s continued existence titled “Hawai‘i’s Sovereignty and Survival in the Age of Empire.”

Michael Shapiro, Ph.D., is Professor Emeritus of Political Science at the University of Hawai‘i at Mānoa. Professor Shapiro’s research and teaching interests are in the areas of political theory and philosophy, critical social theory, global politics, politics of media, politics of aesthetics, politics of culture, and indigenous politics. He began teaching for the Department of Political Science at the University of Hawai‘i at Mānoa after receiving his Ph.D. degree from Northwestern University in 1966. Professor Shapiro also taught at the University of California–Berkeley,

1968–1970, twice at the University of Massachusetts on exchanges (1979 and 1986), at the University of Bergen in Norway (1972–73), at the Tisch School of the Arts at NYU (2002), and at Scoula Lorenzo de' Medici in Florence, Italy. Professor Shapiro was also the recipient of the University of Hawai‘i’s Regents’ Medal for Excellence in Research in 2010. In 2015, Polity Press in Cambridge, United Kingdom, published his book *War crimes, Atrocity, and Justice*.

M. Puakea Nogelmeier, Ph.D., is a Professor Emeritus of Hawaiian Language at the University of Hawai‘i Mānoa. His doctorate in Anthropology and M.A. in Pacific Islands Studies was both earned at the University of Hawai‘i Mānoa. Professor Nogelmeier is the co-founder and Executive director of Awaiaulu, a nonprofit organization that has worked for over two decades to restore the continuity of Hawaiian knowledge.

Ibrahim G. Aoudé, Ph.D., is Professor Emeritus of Ethnic Studies at the University of Hawai‘i at Mānoa. Professor Aoudé is the Editor of *Arab Studies Quarterly*, and holds a Ph. D. in Political Science. His publications are in the areas of global geo-politics, the political economy of Hawai‘i, and the politics of West Asia and North Africa. Professor Aoudé authored dozens of refereed articles and book chapters, a book on the Lebanese civil war, and edited three volumes about Hawai‘i’s political economy and social movements. He attended numerous national and international conferences and served on several conference organizing

committees. Dr. Aoudé served as Department Chair of Ethnic Studies for a total of 13 years.

Virginia Metaxas, Ph.D., is Professor Emeritus of History and Women's and Gender Studies, Southern Connecticut State University. Professor Metaxas earned her Ph.D. degree in U.S. Women's, Medical, and Social History at SUNY Stony Brook in 1984. She is the author of Chapter 3, "Licentiousness has slain its hundreds of thousands": The Missionary Discourse of Sex, Death, and Disease in Nineteenth Century Hawai'i, in *Gender and Globalization in Asia and the Pacific, Method, Practice, Theory,* Kathy E Ferguson and Monique Mironesco, eds., (Honolulu: University of Hawai'i Press, 2008). Professor Metaxas has also published two books and several articles about women's, medical, and missionary history in the United States and the Near East. Dr. Metaxas taught Hawaiian History at Southern Connecticut State University and she led five groups of students from Connecticut to Hawai'i on study tours. Dr. Metaxas participated in an NEH Summer Institute at UH in 1999, to study the history and cultures of the Pacific, and was the recipient of a Rockefeller Fellowship at UH in Spring 2003 to research and write about 19th century epidemics in Hawai'i.

Catherine E. Hoyser, Ph.D., is Professor Emeritus of English and Gender Studies. Among the topics, she taught is post-colonial literature including Hawaii as an example of NOT being colonized. Often Dr. David Keanu Sai came to the

University of Saint Joseph in Connecticut to present lectures to her classes and the public. Professor Hoyser's Ph.D. is from Indiana University, Bloomington, where she studied Victorian Studies including British Imperialism. She has a M.A. degree in Teaching Literature from Miami (Ohio) University and has done graduate study at Exeter College, Oxford (England). She has a recent publication, "'Lest the Punishment of Ahab Fall upon You': The Psychic Impact of Concurrent Narratives and the Hawaiian Missionary Legacy," in Ngambouk Vitalis Pemunta (ed.) *Concurrences in Postcolonial Research: Perspectives, Methodologies, and Engagements* (2018).

Carol S. Austad, Ph.D., is Professor Emeritus of Psychology at Central Connecticut State University, where she taught for thirty-seven years. She earned her Ph.D. in clinical psychology from the University of North Texas and is the author or co-author of numerous scholarly articles and books. As a researcher, educator, and clinical psychologist, her work has addressed psychotherapy, psychological well-being, healthcare, and the ways in which social and cultural forces shape human experience. Professor Austad's scholarship also encompasses cross-cultural and Hawaiian psychology, with particular attention to the psychological effects of historical trauma. She is currently researching topics involving sustained cultural identity and psychological resilience over time.

Pascal Lottaz, Ph.D., is an Associate Professor at the Graduate School of Law and Hakubi Center at Kyoto University.[7] Professor Lottaz is one of the editors of a forthcoming book to be published by Bloomsbury London *Neutral Actors in History: Global Case Studies from the 19th and 20th Centuries*, vol. 2, with a chapter on the Hawaiian Kingdom's continued existence as a Neutral State titled "Hawai'i's Neutrality from the Nineteenth Century to the Present."

Masahide T. Kato, Ph.D., is an Associate Professor in Social Sciences at the University of Hawai'i at West O'ahu. Professor Kato received his M.A. degree and Ph.D. degree in Political Science from the University of Hawai'i at Mānoa. Professor Kato also received an M.A. degree in Area Studies, specializing in Social and Cultural Anthropology, from Hiroshima University, Japan. One of the focus areas of his research is the resilience of community-based governance in Hawai'i under belligerent occupation. His publications include "Hawaiian Style Graffiti and the

[7] Pascal Lottaz, *The Politics and Diplomacy of Neutrality* (Oxford University Press, 2022); Pascal Lottaz, *Neutrality Studies, Oxford Research Encyclopedia of International Studies* (Oxford University Press, 2022); Pascal Lottaz, "The Kingdom of Hawaii: Year 132 under US Occupation," Pacal's Substack (Neutrality Studies) (January 4, 2025) (online at https://pascallottaz.substack.com/p/the-kingdom-of-hawaii-year-132-under).

Questions of Sovereignty, Law, Property and Ecology"[8] and "In the Footsteps of Ancestors: Holistic Healing at Kaʻala Cultural Learning Center, Oʻahu, Hawaiʻi."[9]

Dean Itsuji Saranillio, Ph.D., is an Associate Professor and Chair of Graduate Studies in the Department of Political Science at the University of Hawaiʻi at Mānoa. His book, *Unsustainable Empire: Alternative Histories of Hawaiʻi Statehood*, published by Duke University Press, shows how state agencies framed the rules of discourse for civil society through a range of propaganda campaigns that reveal practices of colonial governance and the theatricality of the settler state. He previously taught as tenured faculty in the Department of Social and Cultural Analysis at New York University for ten years.

Iokepa Casumbal-Salazar, Ph.D., is an Associate Professor in the Department of Critical Race and Ethnic Studies at the University of California Santa Cruz. His teachings and research are intersectional, comparative, and relational, focusing mainly on Kanaka Maoli political thought and praxis as well as Indigenous and anticolonial and decolonial social movements beyond Hawaiʻi and Moananuiākea.

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[8] Masahide T. Kato, "Hawaiian Style Graffiti and the Questions of Sovereignty, Law, Property, and Ecology," 14(3) *AlterNative: An International Journal of Indigenous Peoples.* 1-12 (2018) (online at https://doi.org/10.1177/1177180118786242).

[9] Masahide T. Kato, "In the Footsteps of Ancestors: Holistic Healing at the Kaʻala Farm Cultural Learning Center, Oʻahu, Hawaiʻi," 13(1) *International Journal of Health, Wellness, and Society.* 83-98 (2022) (online at https://doi.org/10.18848/2156-8960/CGP/v13i01/83-98).

Professor Casumbal-Salazar received his M.A. degree and Ph.D. degree in Political Science at the University of Hawai‘i at Mānoa.

Wendell “Kekailoa” Perry, Ph.D., J.D., is an Associate Professor of Education and Hawaiian Studies at the University of Hawai‘i at Mānoa. Professor Perry’s dissertation, *Hulikua: Aloha ‘Āina Theory, ‘Ōiwi Guerrilla Praxis, and a Pedagogy of Refusal*, received the American Education and Research Association Division G “Outstanding Dissertation Award” in 2026. Professor Perry received his Ph.D. and J.D. from the University of Hawai‘i at Mānoa. Professor Perry’s research rejects the premise of American colonization and advocates for the deoccupation of the Hawaiian State.

Noelani Iokepa-Guerrero, Ed.D., is an Associate Professor at the University of Hawai‘i at Hilo, Ka Haka ‘Ula o Ke‘elikōlani College of Hawaiian Language. She received her Doctorate in Educational Leadership from the University of Southern California. Professor Iokepa-Guerrero is also a graduate of the Kamehameha Schools Kapālama.

Ngoc Phan received her Ph.D. degree in Political Science from Rice University and is an Associate Professor of Political Science at Hawai‘i Pacific University. Her research focuses on Native Hawaiian public opinion, community-based participatory research, civic engagement, and the relationship between activism and health. Professor Phan has led multiple collaborative research projects

with Native Hawaiian communities, including the 2019 Native Hawaiian Survey, and her scholarship examines Indigenous data sovereignty, cultural identity, and the political determinants of health.

Keolu Fox, Ph.D., is an Associate Professor at the University of California, San Diego, and an internationally recognized expert in Polynesian population genetics, human genomics, and Indigenous data sovereignty. Professor Fox's research focuses on the genetic history, health, and genomic diversity of Native Hawaiian and Pacific Islander populations.

Hiapokeikikāne K. Perreira, Ph.D., is an Associate Professor of Hawaiian Language and Literature at Ka Haka ʻUla O Keʻelikōlani (the College of Hawaiian Language) at the University of Hawaiʻi at Hilo. A pioneering scholar in Hawaiian language revitalization, Professor Perreira made history in 2002 by earning the first-ever Master of Arts degree written and conducted entirely in Hawaiian. He is also the co-founder and ED of Kauluwao, Inc., an educational nonprofit organization that provides professional development and cultural training programs entirely through the medium of the Hawaiian language to support Hawaiian language immersion school teachers across the state. Professor Perreira is a graduate of Kamehameha Schools Kapālama.

Rachel L. Burrage, Ph.D., M.S.W., is an Associate Professor in the Department of Social Work at the University of Hawai'i at Mānoa. Professor Burrage

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Derek Taira, Ph.D., is a Historian of Education and Associate Professor in the Department of Educational Administration at the University of Hawai‘i at Mānoa. Professor Taira holds affiliate positions in the Center of Pacific Island Studies and the Indigenous Politics Program in the Department of Political Science at the University of Hawai‘i at Mānoa. He is the author of *Forward Without Fear: Native Hawaiians and American Education in Territorial Hawai‘i, 1900-1941*. Professor Taira currently researches and teaches on the histories of colonial schooling, territorial Hawai‘i, American education, and the Pacific World.

Bryan Kuwada, Ph.D., is an Associate Professor of Hawaiian Studies at the University of Hawai‘i at Mānoa. Professor Kuwada’s research focuses on the nineteenth-century Hawaiian-language newspapers, Hawaiian and Indigenous literatures, and Indigenous Futurisms. His book *The Mana of Translation:*

Translational Flow in Hawaiian History from the Baibala to the Mauna won the Native American and Indigenous Studies Association's Best First Book Award for 2026. Professor Kuwada received his Ph.D. from the University of Hawai'i at Mānoa and is a graduate of the Kapālama campus of the Kamehameha Schools.

Jérémy Lemarié, Ph.D., is an Associate Professor of Sport Management at University of Reims Champagne-Ardenne and a researcher within the Performance, Santé, Métrologie, Société research unit. He is currently a Visiting Scholar at the University of California, Berkeley (School of Education). Professor Lemarié's research lies at the intersection of economic anthropology, sport and tourism studies, and human–nature relations, with an empirical focus on the United States and Polynesia. He previously held research appointments as a Fulbright Scholar at the University of Hawai'i and as a Visiting Scholar at the University of California, San Diego where he conducted multi-year field research on sport and tourism governance. His academic experience includes teaching sociology at the Paris 1 Panthéon-Sorbonne University and at the Paris Institute of Political Studies (Sciences Po).

Ryan Buyco, Ph.D., is an Associate Professor of Ethnic Studies at Cal Poly in San Luis Obispo where he teaches in the field of Filipino American studies. He holds a Ph.D. degree in Asian Literature, Religion, and Culture from Cornell University and an M.A. degree in Asian Studies from the University of Hawai'i at Mānoa. His

writing and teaching interests focus on Oceanic Filipinx studies, Asian settler colonial critique, decolonial travel writing, and transpacific studies.

Mary-Lindsey Kalikolani Correa, Ph.D., is an Assistant Professor Assistant Professor of Hawaiian-Pacific Studies at the University of Hawai‘i–West O‘ahu. Professor Correa teaches in the Humanities division, specializing in infusing cultural competency into contemporary education, and was awarded the Outstanding Success Advocate Award. She received her M.A. degree and her Ph.D. degree in Political Science from the University of Hawai‘i at Mānoa. Professor Correa is also a graduate of the Kamehameha Schools Kapālama.

Stacy M.T. Potes, Ph.D., is an Assistant Professor at the College of Education at the University of Hawai‘i at Mānoa. Professor Potes has an M.A. degree in Secondary Mathematics Education and a Ph.D. degree in Curriculum and Instruction from the University of Hawai‘i at Mānoa. She specializes in place- and culture-based education.

Kyle Kajihiro, Ph.D., is an Assistant Professor of Ethnic Studies at the University of Hawai‘i at Mānoa. Professor Kajihiro teaches courses on the history of Japanese and Okinawans in Hawai‘i and the Peoples of Hawai‘i. His research and community engagement focuses on the social and environmental impacts of the American military in Hawai‘i and the Pacific region. He also studies how the Japanese American survivors and descendants of World War II concentration camps

draw on their historical trauma to inform their solidarity with other groups facing racially discriminatory detention and violence by the U.S. government. Professor Kajihiro received his M.A. degree and Ph.D. degree in Geography at the University of Hawai‘i at Mānoa.

Joseph D. Foukona, Ph.D., is an Assistant Professor at the University of Hawaii, Manoa. He holds an LL.B. degree and an LL.M. degree from the University of the South Pacific, an LL.M. degree from the Victoria University of Wellington in New Zealand, and a Ph.D. degree in Land, Law and History from the Australian National University. Professor Foukona's areas of expertise are in Pacific legal systems and Pacific history.

Matthew Kekoa Lau, Ph.D., is an Assistant Professor of Indigenous Knowledge and Practice in Sustainable Community Food Systems in the Division of Social Sciences at the University of Hawai‘i West O‘ahu. Dr. Lau's primary scholarship in Hawai‘i focuses on biocultural revitalization of social-ecological interactions to improve Hawai‘i's food system.

Felix Mantz, Ph.D., is an Assistant Professor in the Political Science Department at the University of Hawai‘i at Mānoa. He earned his Ph.D. and Masters of Research (MRes) degrees in International Relations from Queen Mary University of London (UK), and also completed a Masters of Arts (MA) in International Political Economy at King's College London (UK). His research specialties span the

fields of international relations, international political economy, and global environmental politics, decolonial studies. Professor Mantz has intensely researched and published on questions of land grabbing, land theft, extractivism, displacement and colonialism.

Debbie Samaniego, Ph.D., is an Assistant Professor in the Department of Political Science at the University of Hawai‘i at Mānoa. She teaches courses on global politics, international relations, as well as migration and refugee politics. Dr. Samaniego received her M.A. in International Relations from Queen Mary University of London (UK) and her Ph.D. in International Relations from the University of Sussex (UK). Professor Samaniego is a formal Marshal Scholar and now serves on the Marshal Scholarship Selection Committee. She studies megaprojects in Mexico and their relationship to displacement and forced migration, as well as US border externalization in the region.

Manulani Aluli Meyer, Ed.D., was a Professor of Education at Te Wānanga o Aotearoa and is currently an Associate Faculty Specialist at the University of Hawai‘i West O‘ahu and at the Pasifika Communities University (PCU) in Suva, Fiji. Professor Aluli Meyer specializes in the fields of Indigenous Epistemology and Hermeneutics detailed in two published books – *Ho‘oulu: Our Time of Becoming* (2001), and *Ho‘opono: Mutual Emergence* (2025). She has developed global programs dedicated to the function of Indigenous knowledge at Te Wānanga

o Aotearoa in New Zealand and at PCU. She is a world-wide evaluator of Indigenous PhDs and is now focused on the fields of Evaluation, Emerging Technology, and Pasifika Consciousness to assist in the engagement of A.I. Professor Aluli Meyer earned her Doctorate at Harvard University in 1998 studying Hawaiian epistemology. Professor Aluli Meyer is Co-Founder of Niu Now!, a cultural agroforestry movement dedicated to Food Security in Hawai‘i. She has been a Haku Ho‘oponopono for 40 years. (Ho‘oponopono is a Hawaiian family practice of healing through ritualized communication).

Lorenz Gonschor, Ph.D., is a Senior Lecturer in Politics and International Affairs at the University of the South Pacific in Suva, Fiji. He holds a M.A. degree in Pacific Islands Studies and a Ph.D. degree in Political Science, both from the University of Hawai‘i at Mānoa. He is a specialist in the history of diplomacy and regionalism in Oceania, as well as current issues of decolonization and de-occupation.[10] Dr. Gonschor is a member of the *Hawaiian Society of Law and Politics*.

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[10] Lorenz Gonschor, “Survival and State Building in the Kingdom of Tonga,” in H.E. Chehabi & David Motadel (eds.) *Unconquered States: Non-European Powers in the Imperial Age* 527-544 (2024) (online at https://hawaiiankingdom.org/pdf/Survival_and_State_Building_Tonga_(Gonschor).pdf); Lorenz Gonschor, *A Power in the World: The Hawaiian Kingdom in Oceania* (2019); Lorenz Gonschor, “Hawaiian Royal Orders and International Diplomacy,” in Healoha Johnston (ed.), *Ho‘oulu Hawai‘i: The King Kalākaua Era* 55-69 (2018); Lorenz Gonschor, “Ka Hoku o Osiania: Promoting the Hawaiian Kingdom as a Model for Political Transformation in Nineteenth-Century Oceania,” in

Unique Shaw-Dismuke, Ph.D., is a Lecturer in the Department of Ethnic Studies at California Polytechnic State University San Luis Obispo. She received her M.A. and Ph.D. in Sociology, with a specialization in Criminology, from Bowling Green State University. Dr. Shaw-Dismuke's professional background spans the effects of incarceration, critical examinations of power dynamics and ideological frameworks, and cultural sovereignty.

Kimo Alexander Cashman, Ph.D., is Chair of the Department of Curriculum Studies in the College of Education at the University of Hawai‘i at Mānoa. Dr. Cashman has an M.Ed. in Educational Foundations and a Ph.D. in Curriculum and Instruction from the University of Hawai‘i at Mānoa. He also serves as co-director and curriculum developer for the Aloha ‘Āina Education and Leadership Ph.D. and M.Ed. programs.

Federico Magdalena, Ph.D., is Associate Specialist and Assistant Director at the University of Hawai‘i at Mānoa's Center for Philippine Studies and Affiliate Faculty in the Department of Asian Studies. He earned his Ph.D. degree in Sociology from the University of Hawai‘i at Mānoa and an M.A. degree from the University of the Philippines. Dr. Magdalena has taught courses on peace processes, globalization, and social change. He has led a U.S. Institute of Peace-supported

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Sebastian Jobs and Gesa Mackenthun (eds.) *Agents of Transculturation: Border-Crossers, Mediators, Go-Betweens* 157-186 (2013).

peace-education program at Mindanao State University and two Fulbright-Hays projects training U.S. teachers in Philippine languages. His research focuses on Mindanao and Hawai‘i, Islam, social history, and peacemaking tradition. Among his recent publications are “How Mindanao, Sulu, and Palawan Were Nearly Lost to the United States,” Positively Filipino,[11] “José Rizal’s Legacy in Mindanao,”[12] and “Folk Narratives and Peacebuilding.”[13]

Anthony Castanha, Ph.D., is Senior Lecturer of American Indian and Latino Studies in the Department of Ethnic Studies at the University of Hawai‘i at Mānoa. He received his Political Science M.A. degree in International Relations/Hawai‘i Politics and Ph.D. degree in Indigenous Politics/Conflict Resolution from the University of Hawai‘i at Mānoa. Dr. Castanha was academically and actively involved in the Pacific and Caribbean branches of the International Hague Appeal for Peace in 1999, the Hawaiian sovereignty movement for many years under the leadership and mentorship of Dr. Kekuni Blaisdell of Ka Pākaukau, and prominent

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[11] Federico Magdalena, “How Mindanao, Sulu, and Palawan Were Nearly Lost to the United States,” *Positively Filipino* (2024) (online at https://www.positivelyfilipino.com/magazine/how-mindanao-sulu-and-palawan-were-nearly-lost-to-the-united-states).

[12] Federico Magdalena, “José Rizal’s Legacy in Mindanao,” in Serafin P. Colmenares, Jr., and Raymund Llanes Liongson (eds.) *Struggle in the Sphere of Ideas: Critical Reflections on Rizal* (2024).

[13] Federico Magdalena, “Bridging Literature and Peace: Reflections on Folk Narratives and Peacebuilding,” 3 *Tugkad: A Literary and Cultural Studies Journal* 178-187 (2023).

in the long campaign to organize and advocate for the eventual repudiation of the "Doctrine of Discovery" in 2023. He authored "The Doctrine of Discovery: The Legacy and Continuing Impact of Christian 'Discovery' on American Indian Populations" (2015). Dr. Castanha has also taught numerous subjects at Hawai'i Pacific University, the University of Puerto Rico (Río Piedras), and Prescott College in Arizona.

Willy Kauai, Ph.D., is Director of Native Hawaiian Students Services, University of Hawai'i at Mānoa. Dr. Kauai has an M.A. degree and a Ph.D. degree in Political Science from the University of Hawai'i at Mānoa. The title of his doctoral dissertation is "The Color of Nationality: Continuities and Discontinuities of Citizenship in Hawai'i." Dr. Kauai is also Vice-President of the *Hawaiian Society of Law and Politics*, which publishes the *Hawaiian Journal of Law and Politics*. He is also Vice-President of the *Hawaiian Kingdom National Olympic Committee*.

Brandi Jean Nālani Balutski, Ph.D., is a Research & Assessment Specialist, Hawai'inuiākea and Native Hawaiian Student Services, University of Hawai'i at Mānoa. Dr. Balutski has an M.A. and a Ph.D. degree in Education from the University of Hawai'i at Mānoa. The title of her doctoral dissertation is "The Educated Hawaiian State: 'Preserve the Hawaiian Kingdom Independent and Prosperous'." Dr. Balutski is a member of the *Hawaiian Society of Law and Politics*.

She is also the Secretary for the *Hawaiian Kingdom National Olympic Committee*.[14] Dr. Balutski is also a graduate of the Kamehameha Schools Kapālama campus.

Gary Kalehua Krug, Ph.D., has an M.Ed. degree in Curriculum Studies and a Ph.D. degree in Education from the University of Hawai‘i at Mānoa. He is the Principle of *Ka Waihona o Ka Na‘auao Public Charter School*.

Richard Keao Nesmith, Ph.D., is Adjunct Faculty at the Department of Linguistics at the University of Hawai‘i at Mānoa. He received his Ph.D. degree in Applied Linguistics from the University of Waikato in Hamilton, New Zealand, with a focus on language teaching theory and practice. Dr. NeSmith has presented papers at several academic conferences and univesities around the world. Dr. NeSmith is a member of the *Hawaiian Society of Law and Politics*. Dr. NeSmith is also a graduate of the Kamehameha Schools Kapālama campus.

Lynette Cruz, Ph.D., is a former Professor in Cultural Anthropology at Hawai‘i Pacific University. Dr. Cruz served as the O‘ahu Island educational coordinator in the Sovereignty Education program for Hui Na‘auao for 3 years, as Fund Coordinator in Ahupua‘a Action Alliance for the Earth Justice organization, as Board Member and Chair for Hawai‘i People’s Fund, and so many more in

[14] Brandi Jean Nālani Balutski, “He Kaula Uila: Hawaiian Educational Policy in the 19th Century “Ke A‘o Palapala ma Nā Aloali‘i a me Nā Kua‘āina,” 5 *Haw. J.L. & Pol.* 26-56 (2023); Brandi Jean Nālani Balutski, “A‘o Palapala to Ho‘ona‘auao: The Foundations of the Hawaiian National Education System,” 6 *Haw. J.L. & Pol.* 55-74 (2024).

between. She continued to serve many other organizations, such President of Mālama Mākua and Hui Aloha ʻĀina o Ka Lei Maile Aliʻi (an organization dedicated to honoring the life and work of Queen Liliʻuokalani through education and cultural programs). Dr. Cruz received both her M.A. degree and Ph.D. degree in Cultural Anthropology from the University of Hawaiʻi at Mānoa.

Patricia Gozemba, Ed.D., is a lesbian, activist, and academic who lives in Salem. She was a founding member of a lesbian and gay archive in Boston, The History Project, and interviewed patrons of Fran's Place in the early 1980s. A former English and Women's Studies professor, Dr. Gozemba is active in environmental causes and founded Salem Alliance for the Environment in 2001. In 2018, the Massachusetts Commission on the Status of Women named her an "Unsung Heroines," for their work in community development. Salem State University created an award bearing her name that honors campus role models in the LGBT community.

Kamanaʻopono Crabbe, Ph.D., served as the Chief Executive Officer (Ka Pouhana) at the Office of Hawaiian Affairs from 2012 to 2019. On May 5, 2014, Dr. Crabbe sent a letter to U.S. Secretary of State John Kerry requesting that he submit a request with the Department of Justice Office of Legal Counsel for a legal opinion that can establish that the Hawaiian Kingdom ceases to exist as a subject of international law. Secretary Kerry did not submit the request. From 2019-2021, Dr.

Crabbe served as Ka Pouhana-CEO for the Kohala Institute at ʻIole and was appointed by President Biden to the Commission on the White House Initiative for Asian Americans, Native Hawaiians, and Pacific Islanders in September 2024. Dr. Crabbe is currently the Executive Counselor on Native Hawaiian and Pacific Islander Affairs for the Asian Pacific Islander American Health Forum, the largest national health policy- advocacy organization for Asian Pacific Islanders out of Washington D.C. and San Francisco, California. He also serves as the Executive Lead for the Rediscovering Hawaiʻi's Soul Initiative with the Hawaiʻi Executive Collaborative, a professional network of business executives and leadership for Hawaiʻi. He is the President-CEO for Pouhana Consultation Services and recently established the Kūmakua Leadership Academy for NextGen ʻōiwi leaders in cultural-based leadership for the 21st century. Dr. Crabbe received his Ph.D. degree in Clinical Psychology from the University of Hawaiʻi at Mānoa. Dr. Crabbe is also a graduate of the Kamehameha Schools Kapālama campus.

M. Noe Noe Wong-Wilson, Ph.D., is a retired Assistant Professor in Hawaiian Studies from University of Hawaiʻi's Hawaiʻi Community College in Hilo, Hawaiʻi. She holds a Bachelor of Arts with Honors degree in Anthropology from University of Hawaiʻi at Hilo, a Master of Arts in Pacific Islands Studies from University of Hawaiʻi at Mānoa and earned her doctorate in Native Hawaiian Well-Being at the

School of Maori and Pacific Development, University of Waikato, Hamilton, New Zealand (Aotearoa). She is also a graduate of Kamehameha Schools, Kapālama.

Toni Bissen, Ed.D., is an attorney and the Executive Director of the Pūʻā Foundation, a community based non-profit organization in Hawaiʻi that drives "Trauma to Transformation" programs for justice involved women, girls and their families, especially Native Hawaiians.[15] Dr. Bissen received her Doctorate in Education from Marymount University and her J.D. from the University of the District of Columbia David A. Clarke School of Law. Dr. Bissen is also a graduate of the Kamehameha Schools Kapālama campus.

Tammie Noelani Perreira, Psy.D., is a Doctor of Clinical Psychology currently serving patients at Waimānalo Health Center's primary care and cultural

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[15] Toni Bissen, "Trauma, Healing, and Justice: Native Hawaiian Women in Hawaii's Criminal Justice System," in Lily George, Adele N. Norris, Antje Deckert, and Juan Tauri (eds.) *Neo-Colonial Injustice and the Mass Imprisonment of Indigenous Women. Palgrave Studies in Race, Ethnicity, Indigeneity and Criminal Justice* (2020) (online at https://doi.org/10.1007/978-3-030-44567-6_10); Toni Bissen, "The Hawaiian Situation: An Overview of Hawaii's People, Politics, Religion, Spirituality, and Culture, Yesterday and Today," in: Dwight N. Hopkins and Marjorie Lewis (eds.) *Another World is Possible: Spiritualities and Religions of Global Darker Peoples* (2009) (online at https://doi.org/10.4324/9781315710945); and Mark K. Patterson, Patrick Uchigakiuchi, and Toni Bissen, "Can prison be a place of healing? The trauma informed care initiative at the Women's Community Correctional Center," 9(2) *Hulili: Multidisciplinary Research on Hawaiian Well Being* 305-338 (2013) (online at https://kamehamehapublishing.org/wp-content/uploads/sites/38/2020/09/Hulili_Vol9_11.pdf).

health clinics since 2014. She earned her Doctorate in Clinical Psychology from the American School of Professional Psychology at Argosy University Honolulu in 2003. Dr. Perreira is a former Native Hawaiian Health Scholar and a former member of the Hawaiian Society of Law and Politics. Her professional background encompasses clinical psychology, Native Hawaiian Health, trauma informed care, rural and community-based healthcare and the protection and wellbeing of people and families receiving institutional care in Hawai‘i. Dr. Perreira is the clinical director of Hawaiian Psychology LLC, an organization providing professional clinical and consultation services grounded in a Hawai‘i sense of place.

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doctoral dissertation, "Kālaiʻāina—Carving the Land: Geography, Desire, and Possession in the Hawaiian Islands," was co-winner of the Weins Award at the University of Hawaiʻi at Mānoa's Department of Geography. That work and several publications derived therefrom provide detailed analyses of the discursive forces used to justify the ouster of the legitimate Hawaiian government in 1893.

Ronald Williams Jr. holds a Ph.D. degree in History with a specialization in Hawaiʻi and Native-language resources. Dr. Williams is a former faculty member at the Hawaiʻinuiākea School of Hawaiian Knowledge at the University of Hawaiʻi at Mānoa and was the founding Director of the University's Lāhui Hawaiʻi Research Center. He served as past President of the 132-year-old Hawaiian Historical Society and has published in a wide variety of academic and public history venues including the Oxford Encyclopedia of Religion in America, the Hawaiian Journal of History, and Hana Hou! Magazine.

William C. "Kalamakūonālani" Rezentes, III, Ph.D., is a licensed clinical psychologist, author, educator, and practitioner of Hawaiian Psychology in Hawaiʻi. He earned his Ph.D. degree in Clinical Psychology from the University of Hawaiʻi at Mānoa and has been licensed as a psychologist in Hawaiʻi since 1989. His professional work has focused on culturally responsive psychology, Native Hawaiian mental health, traditional Hawaiian approaches to healing, and the relationship between culture and psychological well-being. Dr. Rezentes received

extensive formal education in traditional healing practices from various mentors including Kumu Hula (hula master) J. Kahaʻi Topolinski and respected Hawaiian kupuna (elder) Aunty Malia Kama Craver. Dr. Rezentes is the author of Ka Lama Kukui—Hawaiian Psychology: An Introduction (1996) and has authored and co-authored scholarly publications addressing Hawaiian Psychology, Native Hawaiian cultural healing, acculturation, culturally based treatment, substance misuse, and colonial influences on Native Hawaiian health and well-being. Over more than three decades, he has provided clinical services, consultation, education, and training to individuals, families, professionals, schools, and community organizations throughout Hawaiʻi.

Chase J.H. Wiggins, Ed.D., is a member of the Upper School English Department at ʻIolani School and also serves as the school's Archivist. His dissertation research explored the 1863 establishment of ʻIolani School as an explicitly Hawaiian Kingdom school. His work situates ʻIolani School's founding by Kamehameha IV and Queen Emma within a broader tradition of aliʻi adapting Western educational technologies as tools for safeguarding the Hawaiian Kingdom's continued sovereignty.

Exhibit “2”

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
Sep 30, 2021
Michelle Rynne, Clerk of Court

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HAWAIIAN KINGDOM, Plaintiff, vs. JOSEPH ROBINETTE BIDENJR., IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; ET AL. Defendants.	CIV. NO. 21-00243 LEK-RT ORDER GRANTING MOTION FOR LEAVE TO FILE AMENDED AMICUS CURIAE BRIEF

ORDER GRANTING MOTION FOR LEAVE TO FILE AMENDED AMICUS CURIAE BRIEF

Before the Court is a Motion for Leave to File Amended Amicus Curiae Brief on Behalf of Nongovernmental Organizations with Expertise in International Law and Human Rights Law ("Motion") (ECF No. 56) filed by counsel for amici curiae International Association for Democratic Lawyers, National Layers Guild, and the Water Protector Legal Collective on August 17, 2021. Plaintiff Hawaiian Kingdom has not objected to the Motion. The Court elects to decide the Motion without a hearing pursuant to Rule 7.1(c) of the Local Rules of Practice for the United States District Court for the District of Hawaii.

The Court, having carefully reviewed the Motion and attached brief, records and files in this case, and the applicable law, GRANTS the Motion.

DISCUSSION

When determining whether to grant leave to file an amicus brief, courts consider whether the briefing "supplement[s] the efforts of counsel, and draw[s] the court's attention to law that escaped consideration." Miller-Wohl Co. v. Commissioner of Labor & Indus., 694 F.2d 203, 204 (9th Cir. 1982). The amicus may be either impartial or interested individuals, whose function is to advise or make suggestions to the court. See Funbus Sys., Inc. v. Cal. Pub. Utils. Comm'n, 801 F.2d 1120, 1125 (9th Cir. 1986); Miller-Wohl Co., 694 F.2d at 204. "The district court has broad discretion to appoint amici curiae." Hoptowit v. Ray, 682 F.2d 1237, 1260 (9th Cir. 1982), abrogated on other grounds by Sandin v. Conner, 515 U.S. 472 (1995).

In this case, the Court permits the filing of the proposed amended amicus brief. However, an amicus curiae is not a party to litigation." Miller-Wohl Co., 694 F.2d at 204 (citing Clark v. Sandusky, 205 F.2d 915, 917 (7th Cir. 1953)). As such, the amicus may not assume the functions of a party and may not initiate, create, extend, or enlarge the issues. See Miller-Wohl Co., 694 F.2d at 204. The amicus will be permitted to file its amended brief by no later than October 7, 2021, but is not permitted to make any additional filings unless granted leave to do so.

CONCLUSION

The Court GRANTS the Motion for Leave to File Amended Amicus Curiae Brief on Behalf of Nongovernmental Organizations with Expertise in International Law and Human Rights Law (ECF No. 56). However, the amicus may not make any additional filings without leave of court.

The proposed amended amicus brief may be filed **by no later than October 7, 2021**. If the amici curiae fail to comply with this order, the Motion (ECF No. 56) will be denied.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, September 30, 2021.

Rom A. Trader
United States Magistrate Judge

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

HAWAIIAN KINGDOM,
Plaintiff,

v.

JOSEPH R. BIDEN, President of the United States, et al.,
Defendants.

BRIEF OF *AMICI CURIAE* INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS, NATIONAL LAWYERS GUILD, AND WATER PROTECTOR LEGAL COLLECTIVE IN SUPPORT OF PLAINTIFF'S AMENDED COMPLAINT

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DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* state the following:

(1) They have no parent corporations; and

(2) They are not-for-profit corporations and as such, no publicly held corporations own 10% or more of their stock.

TABLE OF CONTENTS

DISCLOSURE STATEMENT i

TABLE OF AUTHORITIES iii

INTEREST OF *AMICI CURIAE* 1

INTRODUCTION 4

ARGUMENT 5

I. The Hawaiian Kingdom is an Occupied yet Inherently Sovereign Nation under International Law 5

a. International Law Protects Sovereignty and Self-Determination of Peoples and Nations 7

b. Under International Law, the Hawaiian Kingdom was an Independent State in 1893 Prior to US Occupation 8

c. International Law Prohibits Occupation of Sovereign States and Imposes Duties on Occupying Powers 10

d. The Hawaiian Kingdom is an Occupied Nation Since January 17, 1893 12

i. President Cleveland's Promise to Queen Lili'uokalani

ii. The Illegal Annexation of Hawai'i

iii. Hawai'i's Admission to the Union and the Apology Resolution of 1993

iv. International Recognition of the Hawaiian Kingdom post-*Larsen* Arbitral Proceedings at the Hague in 2001

II. There is Judicial Precedent of other Article II Occupation Courts 19

a. What is an Article II Occupation Court? 20

b. Historical Precedent of Article II Courts 21

III. The Federal and State Courts of Hawai‘i are *de facto* Article II Occupation Courts 24

IV. Exigent Circumstances Require this Court to Assume Jurisdiction 26

CONCLUSION 29

CERTIFICATE OF SERVICE.....31

TABLE OF AUTHORITIES

U.S. Cases **Page**

American Insurance Co. v. Canter, 26 U.S. (l Pet.) 511 (1828) ……20

Cross v. Harrison, 57 U.S. (16 How.) 164 (1853) ……..……19

F. Hoffmann-La Roche Ltd. v Empagran S.A., 542 U.S. 155 (2004) 5

Graham v. Florida, 560 U.S. 48, 80 (2010)……..5

Hawai'i v. French, 77 Haw. 222, 228, 883 P.2d 644, 650 (Ct. App. 1994) …...…17

Hilton v. Guyot, 159 U.S. 113, 163 (1895)……..……..5

Lawrence v. Texas, 539 U.S. 558 (2003)……..……....5

Mechanics' & Traders' Bank v. Union Bank of La., 89 U.S. 276 (1874)....20, 22, 25

Murray v. *The Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804)……..5

Paquete Habana, 175 U.S. 677 (1900) 6

Roper v. Simmons, 543 U.S. 551, 575 (2005).. ……..……..5

Talbot v. Seeman, 5 U.S. (1 Cranch) 1 (1801) 5

United States v. Schooner Peggy, 5 U.S. (1 Cranch) 103 (1801).....5

Underhill v. Hernandez, 168 U.S. 250, 252 (1897) ……..….10

Mechanics' & Traders' Bank v. Union Bank of La., 89 U.S. 276 (1874) …...……21

Constitution

U.S. Constitution, art. II 13

U.S. Constitution, art. VI.....6

Legislative History

United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai'i: 1894-95, 586 (1895) ……..….13

President Woodrow Wilson's Address to Congress, *The Washington Post* (12 Feb. 1918) 8

Public Law No. 103-150 of the 103rd Congress, approved by President Clinton on November 23, 1999 16

International Treaties and Other Materials

International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 (1976) *7*

Montevideo Convention on the Rights and Duties of States, 1933, 165 LNTS 19, Article 1 9

G.A. Res. 1803 (XVII), December 14, 1962 United Nations 7

Article 54 of the Fourth Geneva Convention, July 6, 1955 10

1849 Treaty of Friendship, Commerce and Navigation Vienna Convention on the Law of Treaties, April 24, 1970.....6

1851 Hawaiian-British Treaty 9

1875 Hawaiian- Austro/Hungarian Treaty 9

1862 Hawaiian-Belgian Treaty 9

1846 Hawaiian-Danish Treaty 9

1857 Hawaiian-French Treaty 9

1879 Hawaiian-German Treaty 9

1863 Hawaiian-Italian Treaty 9

1871 Hawaiian- Japanese Treaty 9

1862 Hawaiian-Dutch Treaty 9

1852 Hawaiian- Norwegian/Swedish Treaty 9

1882 Hawaiian-Portuguese Treaty 9

1863 Hawaiian-Spanish Treaty ……..9

1864 Hawaiian-Swiss Treaty……..9

Larsen v. Hawaiian Kingdom, 119 Int'l Law Reports 566, 581 (2001)…….. 16, 17

Other Sources

Anonymous, *Provisional Judiciary of Louisiana*, 4 AM. L. REG. 257, 268 (March 1865) ……..23

David J. Bederman, *Article II Courts*, Mercer Law Review Vol. 44 (1993), pg. 825-879 at 851 ……..20, 21-24

Federico Lenzerini, *Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom* (2020) ……..9, 12

WILLIAM SCHABAS, WAR CRIMES RELATED TO THE UNITED STATES BELLIGERENT OCCUPATION OF THE HAWAIIAN KINGDOM (The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom, edited by David Keanu Sai, 151–169) ……. 10

Marco Sassoli, "Article 43 of the Hague Resolution and Peace Operations in the Twenty-first Century," *International Humanitarian Law Research Initiative (2004)*…… 11

Hurst Hannum, 'Rethinking Self-Determination', 34 Va. J. Int'l. L. 1, 37 (1993 ..16

National Lawyers Guild, *NLG Calls upon US to Immediately Comply with International Humanitarian Law in its Illegal Occupation of the Hawaiian Islands* (January 13, 2020) …… 11, 18

Resolution of the International Association of Democratic Lawyers *Calling Upon the United States to Immediately Comply with International Humanitarian Law in Its Prolonged Occupation of the Hawaiian Islands—Hawaiian Kingdom* (February 7, 2021) ……..18

INTEREST OF *AMICI CURIAE*

Amici curiae are three organizations of lawyers and jurists throughout the United States and the world with ample expertise concerning international law, international human rights, humanitarian law, and norms regarding statehood, sovereignty, self-determination, and the rule of law.

Amici submit this brief to ensure a proper understanding and application of the international law and judicial precedent regarding occupation courts that are relevant to this case. Amici submit this brief to explain how the international norms and judicial precedent in Article II occupation courts support the Plaintiff's request for Declaratory Judgment and Injunctive Relief.

Amici file this brief pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure. Counsel for Plaintiff Hawaiian Kingdom have consented to the filing of this brief. There is no opposition to the filing of the brief at this time as Defendants have either not taken a position or not entered an appearance in this case.[1] The Court has granted leave to file this brief [ECF No. 90].

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[1] *Amici* hereby certify that no party or person other than *amici* and their counsel authored this brief in whole or in part, or contributed money intended to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E). Defendants County of Kaua'i and County of Hawai'i had opposed the filing of the initial amicus brief but have since been dismissed from this case.

The International Association of Democratic Lawyers ("IADL") is an international organization of lawyers and jurists with member associations and individual members in over 90 countries. IADL was founded in 1946 by a large group of lawyers, many of whom served as prosecutors at the Nuremberg trials. Shortly thereafter, the IADL, through its first President, the French jurist Rene Cassin, helped author the Universal Declaration of Human Rights (UDHR). IADL has consultative status to the Economic and Social Council of the United Nations (ECOSOC), the United Nations Educational Scientific and Cultural Organization (UNESCO), and the United Nations Children's Emergency Fund (UNICEF).

The National Lawyers Guild ("NLG") is a progressive public interest association of lawyers, law students, paralegals, and others founded in 1937 dedicated to the need for basic and progressive change for the furtherance of human rights. NLG was the first racially integrated bar association and has been involved in key social justice struggles throughout its history. The National Lawyers Guild is also dedicated to promoting human rights and the rights of ecosystems over property rights, and advances social justice struggles against entrenched inequalities throughout the globe. As such, the National Lawyers Guild has a long trajectory of international legal work and support for struggles involving international humanitarian law, statehood, sovereignty and self-determination.

The Water Protector Legal Collective ("WPLC") is an Indigenous-led legal non-profit organization that began in 2016 as the on-the-ground legal team at Oceti Sakowin camp at Standing Rock in defense of Water Protectors in frontline resistance to the Dakota Access Pipeline. The Water Protector Legal Collective provides legal support and advocacy for Indigenous Peoples and Original Nations, the Earth, and climate justice movements across Turtle Island (what is known as North America) and internationally. WPLC is dedicated to the protection and defense of sacred lands and cultural resources threatened by extractive industry and mass development, advancing Earth and climate justice, supporting the sovereignty and self-determination of Indigenous Peoples and Original Nations around the world, and international human rights advocacy.

INTRODUCTION

The purpose of this brief is to bring to the Court's attention customary international law norms and judicial precedent regarding Article II occupation courts that bear on the long-standing belligerent occupation of the Hawaiian Kingdom by the United States at issue in this case.

In assessing the legality of the US occupation of Hawai'i, the Court should be cognizant of customary international law and international human rights treaties that are incorporated into domestic law by virtue of Article VI, section 2 of the Constitution (the "Supremacy Clause"). International law, which includes treaties ratified by the United States as well as customary international law, is part of U.S. law and must be faithfully executed by the President and enforced by U.S. courts except when clearly inconsistent with the U.S. Constitution or subsequent acts of Congress.

The question here is not whether the Hawaiian Kingdom has standing in an Article III court. The question is whether this court can sit as an Article II occupation court and whether the claims of the Hawaiian Kingdom can be redressed. The answer to both questions is yes.

ARGUMENT

In deciding this matter, the Court must do so in a manner that is consistent with the United States' obligations under international law.

I. The Hawaiian Kingdom is an Occupied yet Inherently Sovereign Nation under International Law

The Court should render its decision for the Plaintiff consistent with the United States' obligations under international law.[2] In an 1801 Supreme Court case, the Court ordered the President to restore a French merchant ship to its owner pursuant to treaty obligations: "The constitution of the United States declares a treaty to be the supreme law of the land. Of consequence its obligation on the courts of the United States must be admitted."[3]

Federal courts look to international law for interpretative guidance of constitutional and statutory provisions, as well as to ensure compliance with international legal obligations. *Graham v. Florida*, 560 U.S. 48, 80 (2010); *see also Roper v. Simmons*, 543 U.S. 551, 575 (2005) (noting international authority as "instructive for [the Court's] interpretation" of the Constitution); *Lawrence v.*

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[2] "Taking notice" of treaty obligations comports with a core principle of statutory construction announced by the Supreme Court in *Murray* v. *The Charming Betsy*: "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains. 6 U.S. (2 Cranch) 64, 118 (1804); *accord Talbot v. Seeman*, 5 U.S. (1 Cranch) 1, 43 (1801); *see aff'd, e.g.*, *F. Hoffmann-La Roche Ltd. v Empagran S.A.*, 542 U.S. 155, 164 (2004).

[3] *United States v. The Schooner Peggy*, 5 U.S. (1 Cranch) 103, 109 (1801).

Texas, 539 U.S. 558, 572–73 (2003). *See Hilton v. Guyot*, 159 U.S. 113, 163 (1895) ("International law . . . is part of our law, and must be ascertained and administered by the courts of justice . . . .").

When the United States entered into the 1849 Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom, it created obligations under international law and the U.S. Constitution which recognizes treaties as part of U.S. law. Customary international law is also part of U.S. law and is enforceable by U.S. courts.[4] Under the Supremacy Clause of the Constitution, "treaties made ... under the authority of the United States, shall be the supreme law of the land, and judges of every state shall be bound thereby."[5]

The United States violated that treaty, and the Vienna Convention on the Law of Treaties, by imposing American law over people within the territorial jurisdiction of the Hawaiian Kingdom. The U.S. has duties to the Hawaiian Kingdom pursuant to its treaty obligations as a signatory (as of April 24, 1970) to the Vienna Convention on the Law of Treaties. Although the US hasn't ratified the Vienna Convention, it is U.S. policy to regard it as an expression of customary

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[4] In *The Paquete Habana*, the Supreme Court held that customary international law "is part of our law" and directly enforceable in courts when no conflicting treaty, legislative act, or judicial decision controls. 175 U.S. 677, 700 (1900). *See also* Restatement (Third) of the Foreign Relations Law of the United States § 111(3) (customary international law must be enforced in U.S. courts even in the absence of implementing legislation or whether they appear in a treaty).

[5] U.S. Const. art. VI, cl. 2.

international law, including the provisions under Part V. applicable to Invalidity, Termination and Suspension of the Operation of Treaties.

Despite the customary international law and the duties under treaties and other international instruments, the history of the Hawaiian Kingdom shows a usurpation of sovereignty via the illegal occupation of Hawai‘i by the United States.

a. International Law Protects Sovereignty and Self-Determination of Peoples and Nations

The United Nations Charter states that all states are juridically equal and enjoy the same rights and duties based upon their existence under international law. The right of nations to determine their own political status and exercise permanent sovereignty within their territorial jurisdictions is widely recognized.[6] Sovereignty, is the most essential attribute of the state and is often defined as complete self-sufficiency and supremacy in domestic policy and independence in foreign policy. Taken together with the principle of self-determination and the prohibition against the use of force, has developed into one of the *jus cogens* norms of modern international law.

As stated in the Charter of the United Nations (United Nations 1945) (treaty ratified by the United States in 1945) and in Article 1 of the

[6] General Assembly Res. 1803 (XVII) of December 14, 1962, United Nations. *See also* International Covenant on Civil and Political Rights.

International Covenant on Economic, Social and Cultural Rights (ICESCR) (UN General Assembly 1966) and the International Covenant on Civil and Political Rights (ICCPR) (treaty signed by the United States in 1992), "[a]l peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

The right to self-determination attributes peoples a free choice to determine their own destiny, particularly in political terms. In 1918, United States President Woodrow Wilson consecrated self-determination as "a paramount principle of international legitimation" and declared that "[n]ational aspirations must be respected; peoples may now be dominated and governed by their own consent. Self-determination is not a mere phrase, it is an imperative principle of action which statesman will henceforth ignore at their peril."[7]

Despite the protections under international law, it is these norms of sovereignty and self-determination of the Hawaiian Kingdom and the Hawaiian people that the United States has violated in its ongoing occupation.

b. Under International Law, the Hawaiian Kingdom was an Independent State in 1893 Prior to US Occupation

At the time of the American occupation, the Hawaiian Kingdom fully satisfied the four elements of statehood prescribed by customary international law,

[7] *See* President Woodrow Wilson's address to Congress, *The Washington Post* 912 Feb. 1918).

which were later codified by the Montevideo Convention on the Rights and Duties of States in 1933: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.[8] This instrument codified the so-called declarative theory of statehood, already accepted by customary international law.

It is undisputed that in the nineteenth century, the Hawaiian Kingdom existed as an independent State recognized by the United States and the international community, including by exchanges of diplomatic or consular representatives, and the conclusion of treaties, which to-date have never been rescinded.[9] Undoubtedly, the Hawaiian Kingdom was a State at the time when the United States of America militarily occupied it on January 17, 1893.[10]

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[8] *See* Montevideo Convention on the Rights and Duties of States, 1933, 165 LNTS 19, Article 1.

[9] Treaties include: The 1851 Hawaiian-British Treaty, the 1875 Hawaiian-Austro/Hungarian Treaty, the 1862 Hawaiian-Belgian Treaty, the 1846 Hawaiian-Danish Treaty, the 1857 Hawaiian-French Treaty, the 1879 Hawaiian-German Treaty, 1863 Hawaiian-Italian Treaty, the 1871 Hawaiian- Japanese Treaty, the 1862 Hawaiian-Dutch Treaty, the 1852 Hawaiian- Norwegian/Swedish Treaty, the 1882 Hawaiian-Portuguese Treaty, the 1863 Hawaiian-Spanish Treaty, the 1864 Hawaiian-Swiss Treaty.

[10] Federico Lenzerini, *Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom* (2020). https://hawaiiankingdom.org/pdf/Legal_Opinion_Re_Authority_of_Regency_Lenzerini.pdf (Last visited July 29, 2021).

c. International Law Prohibits Occupation of Sovereign States and Imposes Duties on Occupying Powers

The U.S. Supreme Court stated in *Underhill v. Hernandez*, "[e]very sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." *Underhill v. Hernandez*, 168 U.S. 250, 252 (1897). Additionally, it is a rule of international law as enunciated in *Lotus,* "[that] 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."[11] The usurpation of sovereignty is thus considered a war crime under international law.[12]

Similarly, Article 54 of the Fourth Geneva Convention states, "[t]he Occupying Power may not...in any way apply sanctions to or take any measures of coercion or discrimination against them." The Fourth Geneva Convention was ratified by the United States Senate on July 6, 1955 and came into force on February 2, 1956; it is binding on the United States.

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[11] *See Lotus*, PCIJ Series A, No. 10, 18 (1927).

[12] WILLIAM SCHABAS, WAR CRIMES RELATED TO THE UNITED STATES BELLIGERENT OCCUPATION OF THE HAWAIIAN KINGDOM. (The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom, edited by David Keanu Sai, 151–169. Honolulu: Ministry of the Interior, Hawaiian Kingdom, Royal Commission of Inquiry).

On November 10, 2020, the National Lawyers Guild (NLG) sent a letter to Governor Ige that stated:

> "International humanitarian law recognizes that proxies of an occupying State, which are in effective control of the territory of the occupied State, are obligated to administer the laws of the occupied State. The State of Hawai'i and its County governments, and not the Federal government, meet this requirement of effective control of Hawaiian territory under Article 42 of the 1907 Hague Regulations, and need to immediately comply with the law of occupation. The United States has been in violation of international law for over a century, exercising, since 1893, the longest belligerent occupation of a foreign country in the history of international relations without establishing an occupying government."[13]

Article 43 of The Hague Regulations respecting the laws and customs of war on land with special relation to military authority over the territory of a hostile state (1907) 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 safety, while respecting, unless absolutely prevented, the laws in force in the country."[14]

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[13]National Lawyers Guild, *NLG Calls upon US to Immediately Comply with International Humanitarian Law in its Illegal Occupation of the Hawaiian Islands* (January 13, 2020), https://www.nlg.org/nlg-calls-upon-us-to-immediately-comply-with-international-humanitarian-law-in-its-illegal-occupation-of-the-hawaiian-islands/.

[14] 36 Stat. 2306; *see also* Marco Sassoli, "Article 43 of the Hague Resolution and Peace Operations in the Twenty-first Century," *International Humanitarian Law Research Initiative (2004) (online* at https://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf*)* (explaining that an occupying force may not extend its own legislation over the

d. The Hawaiian Kingdom is an Occupied Nation Since January 17, 1893

The operative question here is whether the continuous occupation of Hawai‘i by the United States, from 1893 to the present, extinguished the Hawaiian Kingdom as an independent State and, consequently, as a subject of international law.[15] Pending the outcome of that question, it can be established whether the courts in Hawai‘i are Article III courts properly established under the Constitution or if, as *de facto* product of a belligerent occupation by the United States, they are occupation courts under Article II war-making powers of the Executive. The historical facts support the continuity of the Hawaiian Kingdom as a state and that its courts are Article II occupation courts.

While the history of the Hawaiian Kingdom is undoubtedly known to this Court, it is important to restate the essential facts. The United States occupation began on January 17, 1893, when a small group of American businessmen and politicians who favored annexation by the United States, supported by John Stevens, the U.S. Minister to Hawai‘i, and a contingent of Marines from the warship U.S.S. Boston, overthrew Queen Lili‘uokalani in a *coup de main* and proclaimed a provisional government.

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occupied territory – “it must, as a matter of principle, respect the laws in force in the occupied territory at the beginning of the occupation.”).

[15] *See* Lenzerini *supra* note 10.

There has been no "treaty of peace or a proclamation of peace" ending the state of war between the Hawaiian Kingdom and the United States. Instead, in violation of international law, customary law, and the laws of war, the United States annexed, later acquired, and finally added Hawai'i as a State of the Union in 1959.

i. President Cleveland's Promise to Queen Lili'uokalani

Shortly into his presidency, Cleveland appointed Special Commissioner Blount to look into the events in the Hawaiian Islands leading to Queen Lili'uokalani's yielding her authority temporarily. Special Commissioner Blount found that Minister Stevens had acted improperly and after Queen Lili'uokalani yielded her executive authority "until such time as the Government of the United States shall, upon facts being presented to it, undo the actions of its representative… [and restore the Queen] as the constitutional sovereign of the Hawaiian Islands."[16]

The President is also obligated to respect international law pursuant to his constitutional duty faithfully to execute the law and respect treaties as the supreme law of the land.[17] This was the intent of the Framers.[18] President Cleveland

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[16] United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai'i: 1894-95, 586 (1895)
[17] U.S. CONST. art. II, sec. 3.

promised Queen Lili‘uokulani that she would be restored, but Sanford Dole, the president of the Provisional Government of Hawai‘i, refused to turn over power and unilaterally proclaimed Hawai‘i a republic in 1894.

ii. The Illegal Annexation of Hawai‘i

On June 16, 1897, with President William McKinley recently inaugurated, McKinley and representatives of the self-proclaimed government of the Republic of Hawai‘i signed a treaty of annexation which was submitted for ratification to the U.S. Senate. That treaty was defeated in the Senate due to the organizing of fierce opposition from over 21,269 native Hawaiian subjects and resident aliens opposed to annexation.

Nevertheless, when the Spanish-American war broke out, part of which was fought in the Philippines, the strategic value of the Hawaiian islands became palatable and pro-annexation forces in Congress submitted a proposal to annex Hawai‘i by joint resolution.

On July 12, 1898, a Joint Resolution passed requiring only a simple majority in both houses of Congress to annex Hawai‘i. While annexation is historically a permissible mode of acquiring title to some territory, “it is now regarded as illegitimate and primarily as a consequence of the general prohibition on the use of

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[18] Alexander Hamilton, *Pacificus No. 1* (June 29, 1793), *reprinted in* 15 THE PAPERS OF ALEXANDER HAMILTON 33, 33-43 (Harold C. Syrett ed. 1969).

force as expressed in article 2(4) of the UN Charter" and other declarations since than such as the General Assembly Resolution 2625 on Friendly Relations which provides: "The territory of a State shall not be the object of acquisition by another State resulting from the threat of use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal."[19]

Congress exceeded its authority to annex Hawai'i by legislation rather than executive determination of foreign policy. The laws of the United States must comport with and be interpreted in a manner consistent with international law wherever possible. So, even if the President is not directly bound by international law, he is obligated to comply with the Constitution itself and all applicable legislation enacted by Congress within its authority must also comply with international norms incorporated into domestic law.

iii. Hawai'i's Admission to the Union and the Apology Resolution of 1993

Once annexed by the United States, Hawai'i remained a U.S. territory until 1959, when it became the 50th state to be admitted to the Union on March 18, 1959. Nevertheless, purported Hawaiian statehood does not comport with international

[19] Declaration of Principles of International Law, GA Resn. 2625; *see also* Professor Matthew Craven, *Continuity of the Hawaiian Kingdom as A State Under International Law,* Ch. 3, pg. 126-149 in The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom, ed. Dr. David Keanu Sai (2020).

law. The admission into the Union was premised on an illegal annexation and a plebiscite that presented several irregularities including tactics that favored non-native Hawaiian residents rather than nationals of the Hawaiian Kingdom when the United States held a plebiscite on June 27, 1959 regarding the admission of Hawai‘i into the Union.[20]

Article 73(e) of the UN Charter requires UN Member States which administer "territories whose peoples have not yet attained a full measure of self-government" to report these territories to the Secretary General. In 1946, the United States reported Hawai‘i along with the territories of Alaska, American Samoa, Guam, Panama Canal Zone, Puerto Rico and the Virgin Islands. Of those territories, only Hawai‘i was self-governing, since November 28, 1843 when the United Kingdom recognized the independence of the Hawaiian Kingdom.

Public Law No. 103-150 of the 103rd Congress, approved by President Clinton on November 23, 1999, known as the Apology Resolution, "acknowledge[d] the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and [offered] an apology to the native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii." Importantly, Congress noted that "the indigenous Hawaiian people never directly relinquished

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[20] *See* H. Hannum, 'Rethinking Self-Determination', 34 Va. J. Int'l. L. 1, 37 (1993).

their claims to their inherent sovereignty as people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum."

iv. International Recognition of the Hawaiian Kingdom post-*Larsen* Arbitral Proceedings at the Hague in 2001

Purported statehood did not extinguish the Hawaiian Kingdom. In the *Larsen v. Hawaiian Kingdom* arbitral proceedings that began at the Hague in 1999 and concluded in 2001, the Arbitral Tribunal of the Permanent Court of Arbitration (PCA) acknowledged 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."[21] Further, in its annual reports, the Permanent Court of Arbitration, as an intergovernmental organization, acknowledged the continuity of the Hawaiian Kingdom as a non-Contracting State pursuant to Article 47 of the 1907 Convention on the Pacific Settlement of International Disputes.[22]

In Defendant County of Kaua'i's Motion to Dismiss to Plaintiffs' original

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[21] *See Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566, 581 (2001).

[22] *See* PCA Annual Reports 2000-2011, Annex 2, *Cases Conducted under the Auspices of the PCA or with the Cooperation of the International Bureau* ("Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention)").

Complaint, the County cites *Hawai'i v. French*, 77 Haw. 222, 228, 883 P.2d 644, 650 (Ct. App. 1994) in support of the statement that there is "no factual (or legal) basis for concluding that the [Hawaiian] Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature." [ECF No. 15-1, Page ID #158]. This assertion is factually and legally incorrect. The 1994 ruling in *French* stands in stark contrast to the 2001 Arbitral Award of the Permanent Court of Arbitration of the *Larsen v. Hawaiian Kingdom* and the PCA Annual Reports from 2000-2011, that explicitly found Hawai'i to be a continued state to-date under international public law.

On February 25, 2018, Dr. Alfred M. deZayas, a United Nations Independent Expert from the Office of the High Commissioner for Human Rights, communicated to two State of Hawai'i trial judges and members of the judiciary:

> "I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States)."[23]

In a resolution dated February 7, 2021, the International Association of Democratic Lawyers (IADL) "call[ed] on all United Nations members States and

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[23] *See* Letter from National Lawyers Guild to State of Hawai'i, pg. 3.

non-member States to not recognize as lawful a situation created by a serious violation of international law, and to not render aid or assistance in maintaining the unlawful situation. As an internationally wrongful act, all States shall cooperate to ensure the United States complies with international humanitarian law and consequently bring to an end the unlawful occupation of the Hawaiian Islands."[24]

The laws of the United States must be interpreted in accordance with the Constitution, treaties, and international law.

II. There is Judicial Precedent of other Article II Occupation Courts

The bare assertion that "this Court is not an Article II Court" [ECF No. 15-1, Page ID #155] is conclusory without any supporting law or discussion of historical precedent. In actuality, there is ample historical precedent regarding Article II courts, or occupation courts. This history is not widely known given the majority of courts are Article III ("Constitutional" courts) or Article I ("legislative" courts). Nevertheless, academic legal scholars and legal history show ample precedent for Article II courts when the United States has militarily occupied territory.

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[24] Resolution of the International Association of Democratic Lawyers *Calling Upon the United States to Immediately Comply with International Humanitarian Law in Its Prolonged Occupation of the Hawaiian Islands—Hawaiian Kingdom* (February 7, 2021) (online at https://hawaiiankingdom.org/pdf/IADL_Resolution_on_the_Hawaiian_Kingdom.pdf).

a. What is an Article II Occupation Court?

i. General Characteristics

The central attribute of an Article II court is an executive action that grants it criminal and civil jurisdiction over civilians in an occupied territory. The President's ability to create Article II courts extends from the responsibility as commander in chief to govern areas occupied by U.S. forces.[25] Most Article II courts in history have been created by an executive order—either before the creation of the court or by ratification after-the-fact—but creation of an Article II court does not require such express action. The President can authorize local commanders to form a civil government for the occupied territory.[26] Any court whose jurisdiction over an occupied territory flows from the exercise of executive war powers is an Article II court.[27] This authority remains until: (1) a peace treaty grants sovereignty of the occupied territory to the United States; and (2) an act of Congress transfers criminal and civil jurisdiction over civilians to a legislative court.[28] The President alone has power to negotiate treaties as "part of a general

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[25] *See Cross v. Harrison*, 57 U.S. (16 How.) 164, 189 (1853) (Wayne, J.); *see also* David J. Bederman, *Article II Courts*, Mercer Law Review Vol. 44 (1993), pg. 825-879 at 851.
[26] *Bederman* at 851.
[27] *Cf. Mechanics' & Traders' Bank v. Union Bank,* 89 U.S. (22 Wall.) 276 (1874), aff'g 25 La. Ann. 387 (1873).
[28] *See American Insurance Co. v. Canter,* 26 U.S. (l Pet.) 511 (1828).

authority to control diplomatic communications."[29] The Senate must ratify any treaty by a two-thirds majority, but the legislature has no other role in the treaty process.

b. Historical Precedent of Article II Courts

Article II courts—also known as "occupation courts"—have existed throughout United States history, starting with the Mexican War in 1846 and followed by the "heyday of occupation courts" during the Civil War as large tracts of Confederate territory came under Union control in the 1860s and there was a need for provisional military governments and provisional tribunals. This continued during the Spanish-American War in 1899 and occupation courts were established after World War II from 1949 until 1971 in Okinawa and Ryukyu Islands, when the United States returned those territories to Japan. At least twelve occupation tribunals, organized under the executive war-making power of the President, were established throughout that time.[30]

"Executive courts were a phenomenon closely associated with the occupation of enemy territory by American troops. Because military occupation invariably entailed the replacement of one sovereign with another, American jurists

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[29] National Constitution Center, *Interactive Constitution- Article II, Section 2: Treaty Power and Appointments*, https://constitutioncenter.org/interactive-constitution/interpretation/article-ii/clauses/346

[30] *Bederman supra* note 25 at 837-849 (providing a survey of executive courts in the history of the United States).

were particularly sensitive to the constitutional implications of this presidential war-making power."[31]

Essential juridical principals of military occupation that stemmed from these tribunals apply to the present day: 1) the President, by virtue of his war making powers under Article II, may govern regions subject to belligerent occupation; 2) it is implicit that the President substantially delegates to his army and navy commanders the responsibility for the actual conduct of the military government; 3) no apparent restrictions force the President, or his commanders, to conduct the belligerent occupation in a particular fashion; and 4) at some point the occupation must come to an end—presumably, but not necessarily, by the conclusion of hostilities—and, at that time, the President's exclusive and unfettered powers of military occupation should lapse[32]

Executive tribunals are, "[f]irst and foremost, [a] testament to the elasticity of a constitutional text that can stretch to accommodate circumstances of national emergency without snapping in defense of basic freedoms."[33]

Particularly analogous to the situation here are the Provost Courts of Louisiana, first established by the military and President Lincoln in 1862 as the Union Army occupied New Orleans and surrounding areas. After the authority of

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[31] *Id.* at 849.
[32] *Id.* at 851.
[33] *Id.* at 877.

these Article II courts was challenged, the U.S. Supreme Court "for the first time"[34] addressed the distinction between Article III and Article II courts. In *Mechanics' & Traders' Bank v. Union Bank of La.*, Justice Strong wrote of Article III, "That clause of the Constitution has no application to the abnormal condition of conquered territory in the occupancy of the conquering army." 89 U.S. 276 at 295 (1874). Given that, as previously discussed, Hawai'i remains belligerently occupied by the United States, Article III courts similarly should have no application in the instant case, and must instead be replaced by an Article II court.

Moreover, the Louisiana precedent demonstrates that Article II occupation courts can continue to exist after military battles have subsided, as is the case in Hawai'i: "[t]he Provisional Court for Louisiana…carried on with its work long after the state had been militarily subdued."[35] These courts also continued to apply the laws of the occupied state. As a contemporary *American Law Register* article makes clear, "These courts were all of them ever guided by the laws of Louisiana in the administration of justice."[36] So, too, must the court here apply the laws of the occupied Hawaiian Kingdom.

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[34] *Id.* at 853
[35] *Id.* at 861.
[36] Anonymous, *Provisional Judiciary of Louisiana*, 4 AM. L. REG. 257, 268 (March 1865)

III. The Federal and State Courts of Hawai‘i are *de facto* Article II Occupation Courts

There is no dispute that the United States gained control of Hawai‘i through an act of war. [ECF No. 1, Page ID #15] After the *coup de main*, the U.S. forces controlling Hawai‘i allowed the contemporary court system of the Hawaiian Kingdom to maintain operations. While this is not the creation of new courts by direct executive order, this is an example of a local commander exercising executive authority to govern occupied territory. The Hawaiian Kingdom's government had been overthrown. In this situation, the President's power to govern occupied territory is the only valid power that could grant jurisdiction to the Hawaiian Kingdom courts. Consequently, this means Article II courts have existed *de facto* in Hawai‘i since 1893.

The authority of those Article II courts has never been abrogated. It is true that Congress has organized Hawai‘i into a territory and later admitted it into the Union. However, there is no peace treaty between the Hawaiian Kingdom and the United States. Whenever an Article II court's power has been abrogated by Congressional action, there has first been a treaty that granted the United States sovereignty over the occupied territory. Accordingly, "neither the end of hostilities nor the conclusion of a treaty of peace marks the end of presidential power to continue to administer justice through occupation courts. Instead, Congress must

establish courts, thereby supplanting presidential authority in this realm."[37] Through such treaties, the governments previously in control relinquished all claim to the occupied territories. This transfer of sovereignty is a necessary condition for Congress to organize a territory because Congress has no power outside U.S. territory. [ECF No. 1, Page ID # 21].

The facts here show that Congress has no legitimate power over Hawai'i because there was never a peace treaty between nations ending the occupation and Congress has no extraterritorial capabilities. Essentially Congress exceeded its constitutional powers and legislated a legal framework over a sovereign Nation that never ceded its state sovereignty nor the ability and desire to rule itself. Rather than wait to ratify a negotiated peace treaty with Hawai'i to end the occupation and remedy the illegal annexation and later acquisition of Hawai'i, Congress admitted Hawai'i into the Union as the 50th State seeking to sweep a century of inconvenient truths and illegal acts under the rug. The extensive judicial and political infrastructure in modern Hawai'i exists in violation of the laws of war and norms of international law applicable to occupying powers. Yet the Hawaiian Kingdom persists and the United States occupation of Hawai'i that began in 1893 has never effectively ended.

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[37] *Bederman supra* note 25 at 878.

Because Article III courts are created expressly in the United States and organized under the Constitution, there can be no Article III courts outside the territory of the United States. Congress lacked authority to organize Hawai‘i as a state because its legislative powers have no extraterritorial effect. Any court in Hawai‘i at present, therefore, cannot be an Article I legislative tribunal or an Article III court.[38] As such, the only remaining possibility is that courts in Hawai‘i are *de facto* Article II occupation courts and may hear this case while applying the laws of the Hawaiian Kingdom, as required under international law.

IV. Exigent Circumstances Require the Court to Assume Jurisdiction

While the issue of Hawaiian sovereignty may be familiar to this Court, this matter is undoubtedly a case of first impression. However, there are exigent circumstances that necessitate this court's assuming jurisdiction as an Article II occupation court.

This court can sit as an Article II court because the United States controls Hawai‘i not as a sovereign but as an occupying power and there has been no peace

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[38] *See Mechanics' & Traders' Bank v. Union Bank of La.,* 89 U.S. 276, 22 L. Ed. 871 (1874). The United States Supreme Court offered some guidance in this area and articulated the distinction between executive tribunals and Article III tribunals stating that Article III "has no application to the abnormal condition of conquered territory in the occupancy of the conquering army."

treaty between states to end the occupation.[39] Article II courts can extend their jurisdiction to maintain orderly control of an occupied territory. Exercising Article II jurisdiction and granting the requested injunctive relief complies with public international law. In this manner, this Court could apply local law as required of an occupying power by the laws of war.

Article II courts can extend their jurisdiction to maintain orderly control of an occupied territory. For example, the Provisional Court of Louisiana held Article II jurisdiction over the sections of Louisiana under the control of Union forces.[40] The Provisional Court (as provost courts established by military commanders immediately after capturing the territory) first heard cases concerning soldiers and the laws of war but eventually extended its jurisdiction to civil and criminal matters in the occupied territory. Concurrently, Union military commanders revived the local parish courts in occupied territory. These parish courts directed their judgments to the Louisiana Supreme Court for appellate review. One problem: the Louisiana Supreme Court sat in Baton Rouge, which the Confederacy still controlled. Judge Peabody, the chief judge of the Provisional Court, remedied this problem by transferring all cases pending before the Louisiana Supreme Court to his tribunal. By extending his jurisdiction Judge

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[39] *See supra* section on continuity of the Hawaiian Kingdom as a Nation-State under International Law at note 13 and note 15.
[40] *See generally* Bederman supra note 25 at 843-44.

Peabody was able to maintain orderly control of an occupied territory. Louisianans could have their cases heard in local courts applying local law without giving up their right to appellate review. This Court could do the same by assuming jurisdiction as an Article II court and allow Hawaiians to have their cases heard by an occupying court applying local law, as required by the laws of war.

Most importantly, functioning as an Article II court here would not undermine all this Court's past judgments; previous judgments and laws of the United States would remain in effect unless they are at odds with the laws of the occupied Hawaiian Kingdom.[41]

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[41] *See* Proclamation of the Council of Regency of the Hawaiian Kingdom, October 10, 2014, p. 7 ("We do hereby proclaim that from the date of this proclamation all laws that have emanated from an unlawful legislature since the insurrection began on July 6, 1887 to the present, to include United States legislation, shall be the provisional laws of the Realm subject to ratification by the Legislative Assembly of the Hawaiian Kingdom once assembled, with the express proviso that these provisional laws do not run contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international humanitarian law, and if it be the case they shall be regarded as invalid and void[.]").

CONCLUSION

Under the concept of *void ab initio,* there are structures that have no legal effect from inception. The United States occupation of Hawai‘i began with unclean hands, and this can only be remedied by a clean slate and a new beginning. Recognition of the prolonged occupation of the Hawaiian Kingdom by the United States through Declaratory Judgment is not only a redressable claim, it is long overdue and would only be consistent with what is already known to the international community and clear under international law. Additionally, granting the Hawaiian Kingdom injunctive relief would acknowledge the Kingdom's continuous sovereignty, mitigate the United States' liability for its war crimes against the Hawaiian people, and apply local law as required of an occupying power by the international law of war. Acknowledging extraterritoriality and occupation would have the practical effect of applying the laws of the Hawaiian Kingdom but as was the case with prior occupation courts, this would not nullify any prior decisions of any of the courts currently operating in Hawai‘i, so long as they are not inconsistent with local law.

For the foregoing reasons, *amici* request that the Court consider U.S. obligations under international law, which forms part of U.S. law, in evaluating the long-standing occupation of the Hawaiian Kingdom.

Dated: October 6, 2021

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Amended Brief of *Amici Curiae* with the Clerk of the Court for the United States District Court for the District of Hawai‘i by using the CM/ECF system on October 6, 2021.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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

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