

BOARD OF LAND NAD NATURAL RESOURCES

HAWAIIAN KINGDOM

Contested Case Hearing Re Conservation	§	Case No. BLNR-CC-16-002
District Use Application (CDUA) HA-3568	§	
for the Thirty Meter Telescope at the Mauna	§	Dwight J. Vicente MOTION
Kea Science Reserve, Ka'ohae Mauka,	§	TO DISQUALIFY JUDGE RIKI
Hamakua, Hawaiian Kingdom,	§	MAY AMANO (Ret.); STATE OF
TMK (3) 4-4-015:009,	§	HAWAII LACK OF JURISDICTION
	§	TO HEAR THIS CONTESTED
	§	CASE HEARING; CERTIFICATE
	§	OF SERVICE

Petitioner, Dwight J. Vicente hereby files and serves his motion to disqualify Judge Amano from hearing this contested case hearing in the above title matter. Furthermore, Petitioner Vicente raises the issue that the State of Hawaii lacks jurisdiction to hear this contested case hearing based on the illegal annexation and overthrow of the Kingdom of Hawaii, further based on the 1875 Reciprocity Treaty as amended 1887.

Judge Amano authority comes from the 1959 admission of the State of Hawaii into the union of the United States, such admission was based on the illegal annexation of the Kingdom of Hawaii by the United States. There is no authority in the United States constitution that authorizes the United States to annexation any Kingdom or country.

The High Court has stated: “We admit, as all must admit, that the powers of the government are limited and that its limits are not to be transcended. *McCulloch v. The State of Maryland*, 17 U.S. 316, 4 L.Ed. 579, 4 Wheat 316 (1819). “Should Congress, in the execution of its powers, adopt measures which are prohibited by the constitution; or should congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government; it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land.” Here Congress had no authority to annex the Kingdom of Hawaii, therefore, Judge Amano does not have the authority to preside over the instant contested case hearing. But this does not suggest that every express limitation of the constitution which is applicable has no force, but only signifies that even in cases where there is no direct command of the constitution which applies, there may nevertheless be restrictions of so fundamental a nature that they cannot be transgressed, although not expressed in so many words in the constitution. How can one say that annexation was authorized yet nothing in the United States Constitution permits such annexation. Put simply, how can someone have authority, when no authority exists?

A cession of territory is never understood to be a cession of the property belonging to its inhabitants. *United States v. Percheman*, 32 U.S. 51. A King or Ruler can only cede that only which belonged to him/them. Lands they had previously granted, were not theirs to cede. Neither party could so understand the cession. Neither party could consider itself as attempting a wrong to individuals condemned by the practice of the whole civilized world. The cession of a territory by its name from one sovereign to another, conveying the compound idea of surrendering at the same time the lands and the people who inhabit them, would be necessarily understood to pass the sovereignty only, and not the interfere with private property. *Id.* More so, the Republic never own the land or had the authority through the Hawaiian people to rule, therefore, never had the authority to cede land or property to the United States.

Following the well-established doctrine of international law, our Supreme Court has

decided that there can be no forfeiture or confiscation of private property on land, of non-combatant enemies, without the direct authority of an act of Congress. (*Brown v. United States*, 8 Cranch, p. 129; *Mrs. Alexander's Cotton*, 2 Wall., p. 404; *Prize Case*, 2 Black, p. 687; Halleck's International Laws of War, p. 456; 1 Kent's Com., pp. 92, 93; *Act of Congress July 13, 1861*, 12 Stat. L., p. 257; *Act of August 6, 1861*, 12 Stat. L., p. 319; *Act of July 17, 1862*, 12 Stat. L., p. 589.) Especially here where Congress did not have the authority to annexation or take land or property that belongs to the Hawaiian people. It must be pointed out that from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887.

In the Joint Resolution it states: "The municipal legislation of the Hawaiian Islands, not enacted for the fulfillment of the treaties so extinguished, and not inconsistent with this joint resolution nor contrary to the Constitution of the United States nor to any existing treaty of the United States, shall remain in force until the Congress of the United States shall otherwise determine." Therefore, the 1875 Reciprocity Treaty as amended 1887 is still in effect, enforceable and binding.

The United States Constitution, Art. VI, Cl 2 makes very clear: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Supreme law. State officers, no less than federal ones, take an oath to support and defend the Constitution and the laws of the United States." Ibid.; see U.S. Const. Art. VI, Cl. 3, yet here the State refuse to comply with such an oath. The State officials are bound by federal law: they must comply with federal law; and federal law can ensure that they do.

A 2005 audit recommended that UH and DLNR create or revise key documents governing their management of Mauna Kea lands to address confusing management plans and outdated leases and permits. The audit also found that contractual terms and other requirements currently [pre]clude UH and DLNR from updating general leases, subleases, and permits. Therefore, all subleases are illegal and must be ruled as void, in which all telescopes presently on Mauna Kea must be ordered removed forthwith as they were illegally placed on the mountain.

If this hearing does not accept Petitioner's contentions that the annexation of the Kingdom of Hawaii was illegal, then Petitioner would further argue that in 1898, the United States agreed to the offer, annexed Hawaii as a territory, and accepted the cession of "absolute fee and ownership of all public, Government, or [C]rown lands." Newlands Resolution Preamble, § 1, 30 Stat. 750.

The Admission Act in section 5(g) states: As used in this Act, the term 'land and other properties' includes public lands and other public property and other term 'public lands and other public property' 'means and is limited to, the lands and properties that were ceded to the United States by the Republic of Hawaii under the joint resolution of annexation approved July 7, 1898.'" and the Admission Act states: Congress conveyed to the new State "the United States" title to" the ceded lands, except for certain parcels reserved in federal ownership. Admissions Act § 5(b)-(g), 73 Stat. 5-6. Therefore, all lands that were ceded to the United States were Crown, Government and Public land, making the land on Mauna Kea Crown land in which it can never be leased to anyone, especially, subleased.

Petitioner Dwight J. Vicente would request that all hearings and proceedings stop until such time Petitioner's issues are addressed, as presently nothing should be done in these proceedings based on lack of jurisdiction and the Judge does not have the authority to make any rulings concerning Mauna Kea.

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Dwight J. Vicente

CERTIFICATE OF SERVICE

I, **Dwight J. Vicente** hereby certify that a true and correct copy of the foregoing

DWIGHT J. VICENTE MOTION TO DISQUALIFY JUDGE RIKI MAY AMANO (Ret.); STATE OF HAWAII LACK OF JURISDICTION TO HEAR THIS CONTESTED CASE HEARING was served upon the following parties by the means indicated:

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DATED: this 24th day of June 2016.

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