

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

OLIVÉ KALEUATI, individually)	CIVIL NO. 07-504 HG/LEK
and on behalf of the class of)	
parents and/or guardians of)	[CIVIL RIGHTS ACTION]
homeless children in the State of)	
Hawaii, <i>et al.</i> ,)	[CLASS ACTION]
Plaintiffs,)	
)	PLAINTIFFS' MEMORANDUM
vs.)	IN SUPPORT OF MOTION FOR
)	PRELIMINARY INJUNCTION
JUDY TONDA, in her official)	
capacities as the State Homeless)	
Coordinator and the State)	
Homeless Liaison for the)	
Department of Education, State of)	
Hawaii, <i>et al.</i> ,)	
Defendants.)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

For homeless children struggling in a life of poverty, education is a lifeline to a successful and productive future. To ensure that a free public education is within their reach, Congress enacted the McKinney-Vento Act (hereinafter “the McKinney-Vento Act” or “the Act”), 42 U.S.C. §§11301, *et seq.* As relevant here, subtitle VII-B of the Act requires, *inter alia*, that states remove obstacles to the enrollment and attendance of homeless children at public school and ensure that homeless children have equal access to public education, notwithstanding their poverty.

Plaintiffs in this action are homeless children and their parents or guardians in Hawaii who have been denied access to public schooling as a direct result of Defendants’ violations of federal law and the United States Constitution. Plaintiffs and other homeless children in Hawaii¹ have been shut out of schools for extensive periods of time because Defendants raised roadblocks forbidden by the McKinney-Vento Act. As a result, the education of homeless children has been harmed because they were uprooted from the familiarity of their schools, teachers, friends, and curricula as a result of being forced to transfer from school to school as their families moved about seeking shelter.

¹ Plaintiffs are filing a Motion for Certification of Classes concurrently herewith.

Over one year ago, the U.S. Department of Education (hereinafter “USDOE”) gave Defendants — the Hawaii state officials responsible for overseeing the education of homeless children and their families — explicit notice of the Defendants’ failings. (Declaration of William H. Durham (“Durham Decl.”) Ex. 1 at 27-28 (USDOE, Student Achievement and School Accountability Programs, *Hawaii Department of Education Monitoring Report* (April 17-21, 2006) (hereinafter “USDOE Monitoring Report”)).) Since receipt of the Report, Defendants have done nothing to correct those problems, even though they are blatantly violating the Act and keeping homeless children out of school. (*See, e.g.*, Durham Decl. Ex. 2 (Hawaii Dep’t of Education, *Geographic Exception Request Form CHP 13-1* (Revised July 10, 2006) (hereinafter “GE Request”)); Ex. 3 (Hawaii Dep’t of Education, *Honolulu Mass Transit School Transportation Subsidy Application* (2006) (hereinafter “Bus Pass Application”)); *see also* H.A.R. §§8-13-1 through 8-13-10 (Geographic Exceptions), §11-157-6.2 (Student Health Records), §8-27-5 (Transportation).)²

In this action, Plaintiffs seek, in part, enforcement of the McKinney-Vento Act.³ As set forth in this Memorandum and the supporting declarations, the

² For the Court’s convenience, an Appendix containing the relevant provisions of the Hawaii Administrative Rules is attached to this Memorandum and is cited as “App. at [page number(s)]”

³ In this Motion, Plaintiffs seek relief only as to their claim under the McKinney-Vento Act.

harrowing stories of the named Plaintiffs and others demonstrate that Defendants' ongoing violations of the Act are causing harm to numerous children statewide. Defendants' federal law obligations are clear and the resulting harm to Plaintiffs, which will continue to worsen absent a preliminary injunction, is severe and irreparable. Therefore, Plaintiffs request a preliminary injunction compelling Defendants to immediately cease their violations of the Act and to remove barriers to public education as required under the law.

II. RELEVANT FACTUAL BACKGROUND

A. Homelessness in Hawaii

The problem of persons experiencing homelessness or on the brink of homelessness is reaching crisis proportions in Hawaii. While the precise number of homeless people in Hawaii is difficult to ascertain,⁴ conservative counts estimate that there are over 5000 persons sleeping on beaches, parks, benches, cars and shelters every night. (Durham Decl. Ex. 5 at 5, 8 (SMS, *City and County of Honolulu, Homeless Point-In-Time Count, 2007, Methodology and Results* (2007)), Ex. 6 at 11 (FAQ Hawaii, Inc., *2007 Point-In-Time Count* (2007)).)

Moreover, the number of hidden homeless in Hawaii—the people of all ages who

⁴ Defendant Tonda has publicly acknowledged that the precise number of homeless families and children is difficult to calculate due to their mobility, lack of permanent residence and the societal stigma associated with homelessness. (Durham Decl. Ex. 4 at 2 (Rob Perez, *Day-to-Day Survival Haunts Childhood*, Honolulu Advertiser, October 22, 2006).)

move from friend to friend and relative to relative while looking for affordable housing — is estimated to be approximately 100,000. (Durham Decl. Ex. 7 at 2 (SMS, *Housing Policy Study 2006: The Hidden Homeless and Households at Risk of Homelessness* (2007)).)

It cannot be disputed that among the homeless are many families with school-age children who are qualified for and entitled to the protections of the McKinney-Vento Act. The State of Hawaii Department of Education (“DOE”) currently recognizes 908 homeless children as enrolled in school, 532 children living in shelters, 156 unsheltered children, 19 children living “doubled up,” and 201 children whose primary nighttime residence is “unknown.” (Durham Decl. Ex. 8 at 53-54 (USDOE, *Consolidated State Performance Report for State Formula Grant Programs under the Elementary and Secondary Education Act as amended by the No Child Left Behind Act of 2001*, OMB 1810-0614 (2006) (hereinafter “HI State Report”))).)

B. The McKinney-Vento Act

In 1987, recognizing the plight of homeless children who are faced with poverty, uncertainty, physical transience and the stigma that comes with lacking a permanent home, Congress enacted the McKinney-Vento Act. The Act establishes a grant of money to states to provide assistance to homeless families and children. 42 U.S.C. §§11301, *et seq.*

For this case, the relevant portion of the Act, Subtitle VII-B (codified as amended in 42 U.S.C. §§11431-11435),⁵ makes funds available for states to assist in the education of homeless children and requires that states receiving such funds “ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education . . . as provided to other children and youths.” 42 U.S.C.

§11431(1), App. at 1. The Act also mandates that states remove the “laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths” 42 U.S.C. §11431(2), App. at 1. The McKinney-Vento Act was reauthorized as part of the No Child Left Behind Act in 2002. Pub. L. No. 107-110, 115 Stat. 1425 (2002).

The McKinney-Vento Act establishes specific requirements for the treatment of homeless children in public schools. These “requirements are not optional and ‘substantial compliance’ or ‘reasonable efforts’ [are] insufficient under the Act.” *Nat’l Law Center on Homelessness and Poverty v. State of New*

⁵ For the Court’s convenience, an Appendix containing the relevant statutory provisions of Subtitle VII-B of the McKinney-Vento Act is attached to this Memorandum and is cited as “App. at [page number(s)].”

York, 224 F.R.D. 314, 319 (E.D.N.Y. 2004). Specifically, each educational agency that receives McKinney-Vento funding:⁶

- “shall immediately enroll the homeless child or youth, even if the child or youth is unable to produce records normally required for enrollment” (42 U.S.C. §11432(g)(3)(C)(i), App. at 12);
- “shall coordinate . . . with local social services agencies, and other agencies or programs providing services to homeless children and youth and their families. . . .” (42 U.S.C. §11432(g)(5)(A)(i), App. at 14);
- “shall ensure that homeless children and youths enroll in, and have a full and equal opportunity to succeed in, schools of that local educational agency.” (42 U.S.C. §11432(g)(6)(A)(ii), App. at 15);
- “shall . . . provide[] services comparable to services offered to other students in the school . . . including the following: (A) Transportation services” (42 U.S.C. §11432(g)(4)(A), App. at 14);
- “shall review and revise any policies that may act as barriers to the enrollment of homeless children and youths in school” (42 U.S.C. §11432(g)(7)(A), App. at 16); and
- must permit a homeless child to continue to attend school in the child’s school of origin,⁷ or one near the homeless student’s current temporary residence, at the parent’s option. (42 U.S.C. §11432(g)(3)(A), App. at 11-12).

⁶ In every state except Hawaii, the McKinney-Vento Act directly imposes obligations on both state and local educational agencies. (Durham Decl. Ex. 9 (Nat’l Center for Education Statistics, *Digest of Education Statistics: 2006* (2007) (hereinafter “Education Statistics”)).) In Hawaii, the only state composed of a single school district, there are no local agencies. (*Id.*) Thus, pursuant to the McKinney-Vento Act, all obligations in Hawaii are borne by the state agency, the DOE.

⁷ In this Memorandum, the “school of origin” is referred to as the “home school.”

In short, the McKinney-Vento Act obligates states to identify and dismantle obstacles and barriers to school enrollment and attendance to ensure a homeless child's access to education.

C. Defendants' Inadequate Implementation of the McKinney-Vento Act and Violations of Federal Law

Like every other state, Hawaii receives federal funds under the McKinney-Vento Act. (Durham Decl. Ex. 10 at C-102 (USDOE, *School Improvement Programs, Fiscal Year 2008 Budget Request* (2007) (hereinafter "Budget Request")).) In 2006, the DOE received \$224,638. (*Id.*) By accepting these funds, as it has for years, the DOE must comply with the mandatory provisions of the McKinney-Vento Act — a fact that DOE policies explicitly recognize. (Durham Decl. Ex. 11 (DOE, *Proof of Residence, McKinney-Vento*, <http://doe.k12.hi.us/mckinneyventoact.htm> (describing the Education for Homeless Children and Youth Program) (hereinafter "Residency Policy")).) In summarizing the "key provisions" of the McKinney-Vento Act, the Residency Policy provides, *inter alia*, that the DOE must:

- (1) consider the best interests of the child and strive to "continue the child's or youth's education in" his or her home school;
- (2) "immediately enroll the child/youth in school, even if the child or youth lacks records normally required for enrollment, such as

previous academic records, medical records, proof of residency, or other documentation;” and

- (3) “adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, the liaison), to and from the” home school;

(Id.)

To implement the provisions of the Act, the DOE employs a single person, Defendant Tonda, to fill both the roles of State Homeless Coordinator and the State’s sole Local Educational Agency (hereinafter “LEA”) Homeless Liaison. (Durham Decl. Ex. 1 at 27 (USDOE Monitoring Report).) This organizational quagmire is ineffective, imposes inherent conflicts of interest and contributes significantly to Defendants’ failure to provide for the education of homeless children. *(Id.)*

- 1. The McKinney-Vento Violations Against the Named Plaintiffs**

- a. The Kaleuati Family**

The Kaleuati family has been struggling with homelessness for the past five years. (Declaration of Olivé Kaleuati (hereinafter “O. Kaleuati Decl.”) at ¶ 6.) Two years ago, when Plaintiff Olivé Kaleuati attempted to enroll her thirteen year-old son at Dole Intermediate School, the school’s administrators refused to enroll him on three separate occasions because the Kaleuati family lacked a permanent

address. (*Id.* at ¶¶ 22-25.) Ultimately, Ms. Kaleuati sent her son to live with family in American Samoa for his schooling. (*Id.* at ¶¶ 24-25.) He returned six months later when Ms. Kaleuati was able to use a shelter as a permanent address to secure his enrollment at a new public school, Waianae Intermediate. (*Id.* at ¶ 25.)

More recently, after the Kaleuati family moved into a homeless shelter at the Waianae Civic Center (hereinafter “WCC”), Ms. Kaleuati attempted to arrange transportation for her two young sons to their home school, Leihoku Elementary. (*Id.* at ¶¶ 7-8.) Although the school is less than two miles from WCC, Leihoku Elementary’s representative told Ms. Kaleuati that the school did not provide transportation to WCC and, further, that the children could not attend the school in the absence of a geographic exception. (*Id.* at ¶¶ 9-11.) Ms. Kaleuati applied for and was denied the geographic exception. (*Id.* at ¶¶ 12-14 & Exs. 1, 2.) The Kaleuati children were thus forced to make the difficult transfer to Kamaile Elementary School. (*Id.* at ¶ 20; *see also* Declaration of Kaleuati Kaleuati, III at ¶¶ 4-5; Declaration of Klayton Kaleuati at ¶¶ 4-6.)

b. The Lewis Family

Plaintiff Venise Lewis and her two children, Raeana Lewis-Hashimoto (“Raeana”), age eleven, and Kauilani Lewis-Hashimoto (“Kauilani”), age nine, moved into the WCC shelter in March 2007. (Declaration of Venise Lewis (hereinafter “Lewis Decl.”) at ¶¶ 2-3.) Although the children were permitted to

continue attending Maili Elementary School, the preferred home school, Maili Elementary representatives told Ms. Lewis that the school did not provide transportation to children who lived outside of the school's geographic boundaries. (*Id.* at ¶¶ 6-10.) On the advice of shelter workers and counsel, Ms. Lewis contacted Defendant Tonda to arrange for such transportation under McKinney-Vento. (*Id.* at ¶ 11.) It took Ms. Lewis over one month to secure public bus passes for the children, which her young daughters were expected to use unaccompanied. (*Id.* at ¶ 15.) During this time, Raeana and Kauilani missed seven days of their first month of school because the family was unable to afford transportation. (*Id.* at ¶ 16.)

c. Alice Greenwood and Daniel "Makalii" Hatchie

Daniel Hatchie ("Makalii") attended kindergarten at Nanakuli Elementary School where he began to thrive. (Declaration of Alice Greenwood ("Greenwood Decl.") at ¶ 10.) After becoming homeless, Ms. Greenwood, unaware of her and her son's rights under the Act, began escorting Makalii to school on the city bus, which she paid for herself. (*Id.* at ¶ 15-16.) Due to Ms. Greenwood's disability and the inadequacy of using the city bus to get to school, Makalii was frequently late to or missed school. (*Id.* at ¶ 17, 20.) Rather than offer transportation or other assistance, Makalii's teacher, knowing of their homeless status, threatened them — telling Ms. Greenwood that she needed to "figure something out" to get Makalii to

school on time or Ms. Greenwood would be “turned in to the school counselor,” and that Ms. Greenwood and Makalii were “in jeopardy.” (*Id.* at ¶ 21.)

2. The State’s System-Wide Failure to Comply With McKinney-Vento

As illustrated by the following accounts of Defendants’ failures, the named Plaintiffs’ experiences are typical of the situations faced by other homeless families in Hawaii.

On Maui, schools repeatedly violate the McKinney-Vento Act by requiring homeless children to transfer schools, failing to provide them with transportation and failing to immediately enroll children. (Declaration of Esther Santos (hereinafter “Santos Decl”) at ¶ 6.) For example, since the beginning of the 2007-08 school year, 16 children at a single shelter, Ka Hale A Ke Ola Homeless Resource Center, were forced to transfer schools either because the schools refused them enrollment on the basis of geographic region or because the schools refused to provide transportation services to and from the home school. (*Id.* at ¶ 7.) Furthermore, each of these 16 children missed two to three days of school because the new school refused them immediate enrollment due to lack of records, including proof of residency, health records and original birth certificates. (*Id.*)

Similarly, on Oahu, schools routinely deny requests for enrollment and transportation, which results in children missing substantial amounts of school. (Declaration of Daniel Pollard (hereinafter “Pollard Decl.”) at ¶ 8, 10; O. Kaleuati

Decl. at ¶¶ 14, 20, 23-24.) Even on the rare occasion in which a child is permitted to remain in his or her home school, DOE officials continue to deny transportation services and improperly condition enrollment in the home school on maintenance of grades. (Declaration of Bridget Morgan (hereinafter "Morgan Decl.") at ¶ 16.)

D. Over One Year Ago, the USDOE Notified Defendants of Their Non-Compliance with and Violations of the McKinney-Vento Act, But Defendants Have Taken No Corrective Action

Over one year ago, the federal government notified Defendants they were violating the McKinney-Vento Act. (Durham Decl. Ex. 1 at 27-28 (USDOE Monitoring Report).) During the week of April 17-21, 2006, a team from USDOE's Student Achievement and School Accountability Programs office monitored and evaluated the DOE's compliance with the McKinney-Vento Act. (*Id.* at 1.) The USDOE identified at least three of Defendants' failures and set forth an action plan for each. (*Id.* at 27-28.) Specifically the USDOE found that:

Finding (1): The [USDOE] team finds that the [DOE]'s Geographical Exception form that homeless families are required to fill out in order to enroll in school is a barrier to immediate enrollment.

[. . .]

Citation: Section 722(g)(1)(I) of the ESEA requires that the State educational agency has developed, and shall review and revise, policies to remove barriers to the enrollment and retention of homeless children and youths in schools in the State. Additionally, section 722(g)(C)(3) requires immediate enrollment of a homeless child or youth, even if the child or youth is unable to produce records normally required for enrollment, such as proof of residency, or other documentation.

Further action required: [USDOE] requires that the [DOE] review and revise its requirement for Geographical Exception for identified homeless families as a pre-condition for enrollment and align all enrollment requirements with the McKinney-Vento Act, as reauthorized under NCLB.

Finding (2): The [USDOE] team observed that the [DOE] State Coordinator, who also serves as the liaison, has not provided posters and materials on the educational rights of homeless children and youth to local schools on a regular basis.

Citation: Section 722(g)(6)(v) of the ESEA(v) requires public notice of the educational rights of homeless children and youth is disseminated where such children and youth receive services under this Act, such as schools, family shelters, and soup kitchens.

Further action required: [USDOE] requires that the [DOE] demonstrate how it will provide a regular schedule of disseminating information on the educational rights of homeless children and youth to all schools and other appropriate venues.

Finding: The [USDOE] team found that the [DOE] does not have a process to independently monitor the McKinney-Vento program as the State coordinator and State liaison are the same individual and is an employee of the [DOE].

Citation: Section 722(g)(2) of the ESEA requires the State to ensure that LEAs comply with the requirements of the McKinney-Vento ESEA. Section 80.40 of the EDGAR further requires that the State, as the grantee, is to be responsible for monitoring grant and subgrant-supported activities and to assure compliance with applicable Federal requirements.

Further action required: The [DOE] must submit to [USDOE] a plan for the independent monitoring of the McKinney-Vento program.

(Id.)

Since issuance of this failing report card, Defendants have taken no action to address the USDOE's findings. Instead, Defendants continue to enforce policies, practices, rules, regulations and customs that facially violate the McKinney-Vento Act and result in the denial of equal access to public education by homeless students. These include, among other things:

- (1) The Geographic Exception procedure, which does not allow an exception on the basis of homelessness (Durham Decl. Ex. 2 (GE Request); *see also* H.A.R. §§8-13-1 through 8-13-10, App. at 26-31.);
- (2) Department of Health rules requiring health examinations and immunizations *prior* to attendance in school and which fail to provide for provisional attendance of homeless students who lack immunization or health examination records (Durham Decl. Ex. 12 (DOE, *Important Notice to Parents, School Health Requirements* (hereinafter "Health Requirements"))); *see also* H.A.R. §11-157-6.2, App. at 32.);
- (3) Limitations on the provision of free transportation that are based on geographic region and fail to address homelessness (Durham Decl. Ex. 3 (Bus Pass Application); *see also* H.A.R. §8-27-5., App. at 33-34.)

III. STANDARD FOR GRANTING PRELIMINARY INJUNCTIVE RELIEF

On a preliminary injunction, "[t]he district court is not required to make any

binding findings of fact; it need only find probabilities that the necessary facts can be proved.” *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1423 (9th Cir. 1984). In the Ninth Circuit, preliminary injunctive relief is appropriate where the movant shows either: (1) a probability of success on the merits combined with a *possibility* of irreparable harm if the relief is denied; or (2) serious questions are raised and the balance of hardships tips sharply in the movant’s favor.

These “two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases.” *Idaho Sporting Congress v. Alexander*, 222 F.3d 562, 565 (9th Cir. 2002) (*quoting U.S. v. Nutri-Cology, Inc.*, 982 F.2d 394, 397 (9th Cir. 1992)). These are not alternative tests but, instead, are extremes of a single continuum. *See Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir. 2003); *Tillamook County v. U.S. Army Corps of Engineers*, 288 F.3d 1140, 1143 (9th Cir. 2002) (footnotes omitted). Thus, “[i]f the balance of harm tips decidedly toward the plaintiff, then the plaintiff need not show as robust likelihood of success on the merits as when the balance tips less decidedly.” *Malama Makua v. Rumsfeld*, 163 F.Supp.2d 1202, 1215 (D.Haw. 2001) (*quoting Alaska v. Native Village of Vinetie*, 865 F.2d 1384, 1389 (9th Cir. 1988)).

Finally, where, as here, the public interest is involved, the Court must also examine whether that public interest favors the plaintiff. *Malama Makua*, 163 F.Supp.2d at 1215 (citing *Fund for Animals, Inc. v. Lujan*, 962 F.2d 1391, 1400 (9th Cir. 1992)). As discussed below, all of the relevant factors weigh substantially in Plaintiffs' favor.

IV. ARGUMENT

A. Plaintiffs Are Likely To Succeed On The Merits Of Their McKinney-Vento Claim

Defendants' conduct in this case is not merely an arguable or technical violation of a statute. It is a wholesale abdication of their legal obligations under a statutory regime specifically intended to protect homeless children against the sort of neglect and malfeasance detailed in the instant Motion. Plaintiffs are highly likely to succeed on the merits and thus a preliminary injunction should issue.

Defendants have violated and continue to violate the McKinney-Vento Act in several ways. Although Defendants acknowledge they must comply with such requirements, Defendants cannot reasonably dispute that these obligations are not being satisfied. (Durham Decl. Ex. 11 (Residency Policy).) Specifically, and as evidenced by the supporting declarations and Defendants' own policies, practices, customs and regulations, Defendants have failed to:

- (1) Employ and empower adequate personnel to implement the Act meaningfully;

- (2) Adequately conduct outreach, staff training, and public notification to identify homeless children and their families and inform them of their McKinney-Vento rights;
- (3) Revise rules and regulations that provide barriers to education;
- (4) Allow children to remain in their home school;
- (5) Provide comparable transportation services to and from school;
- (6) Immediately enroll children in public school; and
- (7) Develop and implement an appropriate dispute resolution procedure.

Each of these shortcomings is addressed in turn below.

1. Defendants' Failure to Employ and Empower Adequate Personnel to Implement the Act Meaningfully

The McKinney-Vento Act requires the DOE to designate a State Homeless Coordinator to develop and implement, on a statewide basis, the policies and procedures necessary to comply with the Act. 42 U.S.C. § 11432(f), App. at 8-9. The Act also directs that LEA liaisons implement the policies on a local level. 42 U.S.C. § 11432(g)(6)(A), App. at 15. By statute, the State Coordinator is charged with monitoring LEA Liaisons to ensure state-wide compliance with the McKinney-Vento Act. (Durham Decl. Ex. 1 at 27 (USDOE Monitoring Report).) According to the USDOE, LEA liaisons have a critical role in ensuring that homeless children and youth are identified by school personnel and through coordination activities with other entities and agencies, that homeless students have access to immediate enrollment in district schools, that parents or guardians

of homeless children and youth are informed of educational opportunities for their children and to comparable services, including but not limited to transportation, special education and pre-school programs. (Durham Decl. Ex. 13 at 3 (USDOE, *Report to the President and Congress on the Implementation of the Education for Homeless Children and Youth Program Under the McKinney-Vento Homeless Assistance Act* (2006) (hereinafter “2006 Report to Congress”)).)

Hawaii is the only state in the nation with a public education system that is comprised of a single school district or LEA. (Durham Decl. Ex. 9 (Education Statistics).) Hawaii instead divides itself into 15 separate units labeled “Complex Areas.” (Durham Decl. Ex. 14 at 19 (DOE, *2006 Superintendent’s 17th Annual Report* (2006) (hereinafter “Superintendent’s Report”)).) With respect to McKinney-Vento, the DOE has chosen not to assign a separate LEA for each complex and has instead appointed a single person, Defendant Tonda, to fill both the roles of State Homeless Coordinator and the State’s sole LEA Homeless Liaison. (Durham Decl. Ex. 1 at 27 (USDOE Monitoring Report).) Defendant Tonda is thus tasked with developing statewide policies, implementing them at the school level in all 285 public schools in the State of Hawaii, and monitoring herself to ensure compliance with the Act. (*Id.* at 27-28; Durham Decl. Ex. 14 at 13 (Superintendent’s Report).) As the USDOE found, this structure poses an inherent conflict of interest (Durham Decl. Ex. 1 at 27 (USDOE Monitoring

Report)) and is a major cause of Defendants' systemic failures to implement the Act.

The State of Hawaii's implementation of the McKinney-Vento Act cannot be reconciled with the terms or spirit of the Act. By way of comparison, the State of Delaware has at least 22 LEA Homeless Liaisons as compared to Hawaii's one liaison. (Durham Decl. Ex. 15 at 8-9 (Delaware Dept. of Education, *2005-2006 Directory and Resource Guide, Targeting Awareness and Education of Homeless Children and Youth* (2005)).) Yet, according to 2006 figures, Delaware has 90 fewer schools,⁸ 60,000 fewer students,⁹ and receives roughly \$60,000 less per year in McKinney-Vento funding.¹⁰ While Delaware has a homeless population that is roughly five times smaller than Hawaii's,¹¹ the Delaware school system has been able to identify and provide services to 1.7 times more homeless children in their

⁸ See Durham Decl. Ex. 16 at 1 (Delaware Dep't of Education, *Delaware Education, State Report Card 2005-2006* (2007) (hereinafter "DE State Report Card")) (Delaware has 192 public schools); Ex. 14 at 13 (Superintendent's Report) (Hawaii has 285 public schools).

⁹ Durham Decl. Ex. 16 at 1 (DE State Report Card) (Delaware has 119,109 students enrolled in public schools) and Durham Decl. Ex. 14 at 13 (Superintendent's Report) (Hawaii has 181,406 students enrolled in public schools).

¹⁰ Durham Decl. Ex. 10 at C-102 (Budget Request) (Delaware and Hawaii received \$162,973 and \$224,638 respectively in McKinney-Vento funding for 2006).

¹¹ Durham Decl. Ex. 17 (U.S. Dep't of Housing and Urban Development, *2005 Continuum of Care Homeless Assistance Programs, Homeless Populations and Subpopulations* (2006)) (Delaware has 1,108 homeless persons); Ex. 18 (U.S. Dep't of Housing and Urban Development, *2005 Continuum of Care Homeless Assistance Programs, Homeless Populations and Subpopulations* (2006)) (Hawaii

schools.¹² The Hawaii DOE has had a particularly difficult time identifying children who qualify under the McKinney-Vento Act as living with friends or extended family — Hawaii has assisted 19 as compared to Delaware's assistance of 261.¹³

Moreover, Hawaii's sole McKinney-Vento employee, Defendant Tonda, is without the authority to broadly implement the provisions of the Act. By way of example, Defendant Tonda is powerless to order complex superintendents, principals or other school personnel to ignore the mandates of H.A.R. §§ 8-13-1 through 8-13-10, which prohibit granting a geographic exception on the basis of homelessness. (Durham Decl. Ex. 2 (GE Request); O. Kaleuati Decl., Exs. 1-2 (Denials of GE Requests).) Defendant Tonda is similarly without the administrative power to order that the public schools provide transportation to and from school or to order the immediate enrollment of all children without the documentation required by H.A.R. § 11-157-6.2. Rather, in the absence of governing policies, procedures and regulations that comply with the Act's

has 5,796 homeless persons).

¹² Durham Decl. Ex. 19 at 54 (USDOE, *Consolidated State Performance Report for State Formula Grant Programs under the Elementary and Secondary Education Act as amended by the No Child Left Behind Act of 2001*, OMB 1810-0614 (2007)) (Delaware Department of Education identified 1558 homeless students during the 2005-2006 school year); Ex. 8 at 54 (HI State Report) (Hawaii Department of Education identified 908 homeless students during the 2005-2006 school year).

¹³ *Id.*

statutory mandates, Defendant Tonda handles violations of the Act on an ad-hoc basis. In sum, the DOE's failure to assign adequate personnel and to take steps to promulgate the necessary administrative rules and agency policies and procedures to implement the provisions of McKinney-Vento are a major cause of Defendants' wholesale failure to implement the Act.

2. Defendants' Failure to Adequately Conduct Outreach, Training and Public Notification Regarding McKinney-Vento

The McKinney-Vento Act requires Defendants to take an active role to train staff (42 U.S.C. § 11432(g)(1)(D), App. at 10), conduct outreach (42 U.S.C. § 11432(g)(6)(A)(v), App. at 15-16), identify homeless children (42 U.S.C. § 11432(g)(6)(A)(i), App. at 15) and provide notice to homeless families of their McKinney-Vento rights (42 U.S.C. § 11432(g)(6)(iv), App. at 15). Over a year ago, the USDOE found that Defendant Tonda had failed to regularly provide such outreach materials in violation of 42 U.S.C. § 11432(g)(6)(A)(v). (Durham Decl. Ex. 1 at 27 (USDOE Monitoring Report).)

Despite the relative ease and low cost of conducting outreach and training staff, Defendants have taken no meaningful action to address these deficiencies. National organizations that are solely devoted to the education of homeless children have developed materials for use by states and LEAs. For example, the National Center for Homeless Education offers outreach posters, brochures, booklets, and a "Local Homeless Education Liaison Toolkit," all of which can be

downloaded or ordered for free from their website.¹⁴ Yet, service providers for homeless children, all of whom frequently visit schools or shelters, have never seen any materials discussing the educational rights of homeless children. (Santos Decl. at ¶ 33; Pollard Decl. at ¶ 12; Morgan Decl. at ¶ 29; Declaration of Elaine Chu (hereinafter “Chu Decl.”) at ¶ 24.) Nor have any of the Plaintiffs or other homeless declarants seen McKinney-Vento materials at schools or at shelters. (O. Kaleuati Decl. at ¶ 26; Lewis Decl. at ¶ 6; Greenwood Decl. at ¶ 40; Declaration of Cindy Price (hereinafter “Price Decl.”) at ¶ 10; Declaration of Lokelani Correa (hereinafter “Correa Decl.”) at ¶¶ 9-10.)

In fact, even where the named Plaintiffs and other individuals identified themselves as homeless to DOE staff, they were still not provided with notice of their McKinney-Vento rights or referred to Defendant Tonda’s office. (O. Kaleuati Decl. at ¶¶ 8-14, 23; Lewis Decl. at ¶ 10; Greenwood Decl. at ¶¶ 21-22, 40.) Indeed, Defendant Tonda herself has failed to inform individuals with whom she has had repeated contact about the provisions and rights for homeless children under the law. (Santos Decl. at ¶¶ 27-31 (describing her interactions with Defendant Tonda and the perception that Defendant Tonda was nothing more than the educational supply and tutor provider); *see also* O. Kaleuati Decl. at ¶ 27

¹⁴ See the Nat’l Center for Homeless Education website at <http://www.serve.org/nche/> and http://www.serve.org/nche/online_order.php.

(describing several interactions with Defendant Tonda while she attended parenting classes at the shelter).)

Further evidence of Defendants' failures to conduct the required identification and outreach is demonstrated by the recently published *Hawaii's Public Schools*. (Durham Decl. Ex. 20 (DOE, *Hawaii's Public Schools, Advertising Supplement to the Honolulu Advertiser* (September 12, 2007) (hereinafter "DOE Supplement")).) The DOE Supplement, which was published before the start of the 2007-2008 school year and nearly one year after the USDOE findings, sets forth the current DOE policies regarding registration, transportation, geographic exemptions, and special education. (*Id.*) Noticeably absent from the DOE Supplement is any mention of the rights of homeless children. (*Id.*) Not only did the DOE waste a valuable McKinney-Vento outreach opportunity, the DOE Supplement references a number of current DOE policies, practices, customs, rules, regulations and documents that violate McKinney-Vento on its face. (*Id.* at 3, 5, 7, 11; *see also* Durham Decl. Ex. 2 (GE Request); *see also* H.A.R. §§ 8-13-1 through 8-13-10 (Geographic Exception regulations); H.A.R. § 11-157-6.2 (Dept. of Health regulation regarding required immunizations and records).)

Due to these failures of outreach, notice, staff training, and identification, Plaintiffs have largely been unable to assert their McKinney-Vento rights and to meaningfully participate in their children's educational decisions.

3. Defendants' Failure to Correct Rules and Regulations that Function as Barriers to Education

Under the McKinney-Vento Act, Defendants are required to develop, review and revise policies to remove barriers to the enrollment and retention of homeless children and youths in schools in the State of Hawaii. 42 U.S.C. § 11432(g)(1)(I), App. at 10. However, numerous DOE policies, procedures, customs and regulations facially violate the Act.

- H.A.R §§ 8-13-1 through 8-13-10 (Geographic Exceptions)

H.A.R. §§ 8-13-1 through 8-13-1 set forth the DOE procedure for applying for a geographic exception that would allow a child to attend a school outside of the attendance area in which the child lives. H.A.R. § 8-13-3 explicitly refuses to grant geographic exceptions not based on the reasons listed in the rules, which does not include homelessness. As such, the regulations violate the McKinney-Vento Act requirement that children be permitted to remain in the home school. 42 U.S.C. § 11432(g)(3)(A), App. at 11-12.

Additionally, the DOE's geographic exception request form fails to include homelessness as a basis for an exception. (Durham Decl. Ex. 2 (GE Request).) Although the USDOE identified this specific form as a barrier to the immediate enrollment of homeless children and a violation of McKinney-Vento (Durham Decl. Ex. 1 at 27 (USDOE Monitoring Report)), the DOE continues to use the form today. As demonstrated by the Kaleuatis, Defendants' geographic exception

policy and practices continue to bar homeless children from attending public schools. (O. Kaleuati Decl. at ¶¶ 11-14 & Exs. 1-2.)

- H.A.R. § 11-157-6.2 (Student Health Records)

McKinney-Vento also provides that homeless students may enroll in a school immediately, even when they lack the usual required paperwork, such as medical and educational records and proof of residency. 42 U.S.C. §§ 11432(g)(3)(C)(i), App. at 12. However, H.A.R. § 11-157-6.2 sets forth Department of Health rules requiring health examinations and immunizations prior to enrolling in school. (*See also* Durham Decl. Ex. 12 (Health Requirements) (describing health record requirements that must be met prior to enrolling a child in school).)¹⁵ In violation of McKinney-Vento, no exceptions are provided for provisional attendance of homeless students who lack immunization or health examination records.

- H.A.R. § 8-27-5 (Transportation)

Defendants' rules and regulations on student transportation generally limit a student's eligibility for free transportation to students that live within their school's boundaries. Contrary to the requirements of McKinney-Vento, there is

¹⁵ Individual public schools have adopted and currently enforce similar policies. (Durham Decl. Ex. 21 (Kauai High School, *Requirements for New School Entrants*, <http://www.teacherweb.com/hi/kauaihigh/raiders/NewsFlash4.stm>.)

no exception for homeless children that have moved out of the geographical boundaries of home school. *Compare* H.A.R. § 8-27-5 with 42 U.S.C. § 11432(g)(4), App. at 14, 33-34. (*See also* Durham Decl. Ex. 22 (Kauai High School, *Bus Transportation 2007-08*, <http://www.teacherweb.com/hi/kauaih/raiders/h7.stm>) (explicitly stating that transportation shall not be provided to students who live outside the schools' boundaries).)

Furthermore, the current DOE forms used to implement the transportation policies also violate the McKinney-Vento Act. DOE has a general form for parents to request a free city bus pass for their children, but homelessness is not one of the listed categories in which a child must fall to qualify. (Durham Decl. Ex. 3 (Bus Pass Application).) On information and belief, the DOE has a bus pass form for children living in homeless shelters, yet the pass is contingent on the child's school attendance and punctuality, defeating the purpose of the Act. (Durham Decl. Ex. 23 (DOE, *Student Agreement Bus Pass 2006-07* (2006)).) Further, the signature of the shelter administrator is required with the result that the bus pass is not available to those homeless children not living in shelters. *Id.* As in the case of Plaintiffs Greenwood and Lewis, when a homeless parent or child requests a bus pass, he or she must overcome a protracted set of obstacles to obtain the transportation to and from school to which he or she is legally entitled.

(Greenwood Decl. at ¶ 38; Lewis Decl. at ¶ 10-11, 15.) During this time, the children miss substantial amounts of school due to lack of transportation. (*Id.*)

4. Defendants' Failure to Allow Children to Remain in Their Home School

Under the McKinney-Vento Act, a homeless child must, to the extent feasible, be permitted to continue to attend school in either the child's home school or one near the homeless student's current temporary residence, at the parent/guardian's option. The child cannot be refused enrollment because that child does not live in the district's attendance area. 42 U.S.C. § 11432(g)(3), App. at 11-14. Yet, as shown by the experiences of Plaintiffs and homeless service providers, homeless children in Hawaii are regularly denied the opportunity to remain at their "home" school. (*See* O. Kaleuati Decl. at ¶ 14; Santos Decl. at ¶ 6; Pollard Decl. at ¶ 13.)

5. Defendants' Failure to Provide Comparable Transportation Services to and from School

Under the McKinney-Vento Act, each homeless child or youth to be assisted under the law "shall be provided services comparable to services offered to other students in the school," including "transportation services." 42 U.S.C. § 11432(g)(4), App. at 14.

Often, school officials refuse to provide any transportation whatsoever. (Santos Decl. at ¶ 15 (describing how an elementary school principal and the head of the bus company refused to provide transportation for a homeless child that had

moved into a shelter outside the geographical boundaries of the school); Morgan Decl. at ¶¶ 16, 27 (describing how the superintendents of both the Windward and Leeward school complexes denied transportation to the home school for two homeless youth); Chu Decl. at ¶¶ 6-7, 12, 23 (describing how homeless youth missed weeks of school because of being denied transportation).)

On occasion, when homeless families and service providers pursue their rights to transportation, they receive a city bus pass for their children after a protracted fight during which the children miss school. (Lewis Decl. at ¶¶ 10-16 (describing how she obtained bus passes for her children after a month of repeated requests to DOE staff, including Defendant Tonda, during which time her children missed seven days of school); Pollard Decl. at ¶¶ 8-10 (describing how a homeless youth awaiting foster placement missed two weeks of school because the school failed to provide transportation from the shelter where he was staying).)

Notably, even if Defendants developed a program to provide homeless children with public bus passes, such a policy would still fall short of McKinney-Vento's requirements. A city bus pass is not comparable to the school buses provided to non-homeless children living in the district for several indisputable reasons. For example, elementary school-aged children at the "Hope for New Beginning" shelter in Barber's Point must leave the shelter at 5:00 a.m. to take the long, dangerous walk along unpaved roads with no sidewalks or streetlamps to get

to the bus stop. (Declaration of Kanani Bulawan (hereinafter “Bulawan Decl.”) ¶ 6.) Once there, they board the city bus, transfer once or twice, and in some cases walk another dangerous road with no sidewalks to get to school. (*Id.*)

Additionally, provision of city bus passes to children without provision of passes to the parent and/or guardian to accompany the child is hardly comparable to school busing. (*See, e.g.*, Lewis Decl. ¶ 15; Greenwood Decl. ¶ 15.)

Defendants’ haphazard, inconsistently applied practice of providing young children particularly with city bus passes as a means of transportation to and from school is an affront to McKinney-Vento Act’s promise of stability and the right to remain in one’s home school. Indeed, many of these children who are not provided with adequate transportation are forced to transfer to the school that is closest to their family’s temporary shelter rather than remaining in the stability of his or her school. (Bulawan Decl at ¶¶ 13, 16; Santos Decl at ¶ 6.).

6. Defendants’ Failure to Ensure Immediate Enrollment of Homeless Children in Public School

Under the McKinney-Vento Act, a homeless child must be afforded immediate enrollment into school even if the child “is unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation.” 42 U.S.C. § 11432(g)(3)(C), App. at 10. Under the Act, a school cannot refuse to enroll a student who is homeless because that child cannot prove residency in the district’s attendance

area. 42 U.S.C. § 11432(g)(3), App. at 11-14. In the face of DOE rules and policies that violate the Act (H.A.R. §§ 8-13-1 through 8-13-10; H.A.R. § 11-157-6.2 (Geographic Exceptions)); Durham Decl. Exs. 2 (GE Request), 12 (Health Requirements)), it is not surprising that named Plaintiffs and those under the guidance of homeless services providers are regularly denied immediate access to school for failure to provide documentation. (See O. Kaleuati Decl. at ¶¶ 10-14, 22-24; Santos Decl. at ¶ 21-25.)

7. Defendants' Failure to Develop and Implement an Appropriate Dispute Resolution Procedure

Under the McKinney-Vento Act, when a decision regarding enrollment of a child is made, schools, in consultation with the child's parents, make a first line decision regarding the child's best interests. 42 U.S.C. § 11432(g)(3)(B), App. at 12. If there is a disagreement, the school is required to immediately enroll the child at the school of the parent's choice pending resolution of the dispute, provide the parents with written notice of the reasons for the school's determination that the parent's choice of placement is not in the child's best interest and of the parent's right to appeal, and refer the matter to the LEA Liaison. 42 U.S.C. § 11432(g)(3)(E), App. at 13. Once the matter is referred to the LEA Liaison, the Liaison is required to handle the matter pursuant to the dispute resolution procedures that have already been formulated by the State Coordinator. 42 U.S.C. § 11432(g)(6)(A)(vi), App. at 16.

Although Defendants have an appeals process for denials of geographic exception requests — the process itself is fundamentally flawed. In fact, the appeals process fails to provide for the right of the child to attend the desired school pending a decision, and the LEA Liaison is not involved in the process. (Cf. H.A.R. §§ 8-13-1 through 8-13-10; 42 U.S.C. (g)(3), App. at 11-14.) Furthermore, Plaintiffs are unaware of any other dispute resolution procedures specific to McKinney-Vento. (O. Kaleuati Decl. at ¶ 26; Lewis Decl. at ¶ 6; Greenwood Decl. at ¶ 40; Price Decl. at ¶ 10; Correa Decl. at ¶¶ 9-10.) To the contrary, when disputes regarding enrollment arise, the school’s decision is essentially final because homeless parents and students are not informed regarding their McKinney-Vento rights or the process for appealing the school’s determination. (Santos Decl. ¶¶ 11-12.)

B. Plaintiffs Are Threatened with Irreparable Harm Absent In Injunction

The harm to Plaintiffs will be irreparable absent an injunction. *Goldie’s Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984). The instant Motion involves homeless children and their parents/guardians who have been denied access to public school and denied rights set forth in the McKinney-Vento Act. As the courts have observed, “[i]n a large number of cases, failure in school leads ineluctably to adult homelessness and poverty.” *Lampkin v. District of Columbia*, 879 F.Supp. 116, 126 (D.D.C. 1995). An inability even to walk through

the schoolhouse door, particularly where Congress has spoken so directly and clearly on the subject, is a matter of the gravest concern for Plaintiffs and for society at large.

Education is the touchstone to personal fulfillment in today's society and thus its denial, even if only for a brief time, creates an immediate and irreparable risk of denying a child the opportunity to achieve his or her full potential. As the Supreme Court has observed:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Brown v. Board of Educ., 347 U.S. 483, 493 (1954); *see also Cox v. Brown*, 498 F.Supp. 823, 829 (D.D.C. 1980) (irreparable harm results when students “[lack] each day of their young lives an appropriate education. . .”).

Even a brief disruption of a child's education can have grave effects.

“Interruption of a child's schooling[,] causing a hiatus not only in the student's education but also in the other social and psychological development processes that take place during the child's schooling, raises a strong possibility of irreparable injury.” *Orozco by Arroyo v. Sobol*, 674 F Supp. 125, 128 (S.D.N.Y. 1987) (quoting *Ross v. Disare*, 500 F.Supp. 928, 934 (S.D.N.Y. 1977)); see also *Cronin v. Board. of Educ. of the East Ramapo Cent. Sch. Dist.*, 689 F.Supp. 197, 204 (S.D.N.Y. 1998) (finding that a disruption in schooling constitutes irreparable harm because of the accompanying loss of educational, vocational and social development). *A fortiori*, homeless children such as Plaintiffs, who lack the stable, safe home environment many other children enjoy, have particular need for continuity in their education.¹⁶

The McKinney-Vento Act is premised on this notion — that frequent disruptions in the schooling of homeless children has a deleterious effect on their development and impedes them from breaking the cycle of poverty and homelessness. See, e.g., H.R. Conf. Rep. No. 100-174, at 93 (1987), reprinted in

¹⁶ Not surprisingly, homeless students' lack of a stable home environment often translates into educational underachievement. (See, e.g., Durham Decl. Ex. 24 at 42-43 (Yvonne Rafferty, *The Legal Rights and Educational Problems of Homeless Children and Youth*, Educational Evaluation and Policy Analysis, Vol. 17, No. 1 (Spring 1995)).). Homeless children are more likely to be held back a grade, have special education needs and drop out of school. (*Id.*) The U.S. Department of Education found that the most commonly reported reason that homeless children are absent from school is a lack of transportation to or from the temporary residence. (Durham Decl. Ex. 25 at 6 (USDOE, *Education for Homeless Children*

1987 U.S.C.C.A.N. 441. The consequence of Defendants' violations in this case is that the named Plaintiffs, as well as the putative class members whom they represent, have been and will be prevented from attending school for extended periods of time or alternatively have or will have suffered great hardship to maintain their enrollment in their home school. Further, students that bounce between schools as their families move about seeking shelter suffer academically and socially.¹⁷ Generally, a child who changes schools takes from four to six months to recover academically.¹⁸

These delays/denials of enrollment, delays/denials of transportation, and forced transfers has caused the children missed days, setbacks in school performance, psychological, social, and developmental delays, and a denial of full participation in public education.

There is no sum of money that could adequately address Plaintiffs' injuries and, in fact, this case seeks injunctive relief only. *See Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991). The injury to those individuals who have been denied their McKinney-Vento

and Youth Program, Report to Congress, Fiscal Year 2000.)

¹⁷ Durham Decl. Ex. 13 at 15 (2006 Report to Congress); Durham Decl. Ex. 26 at 8 (U.S. General Accounting Office, *Elementary School Children: Many Change Schools Frequently, Harming Their Education* (1994)).

¹⁸ Durham Decl. Ex. 13 at 15 (2006 Report to Congress).

rights, and therefore access to the same public education available to all other children, constitutes irreparable injury.

C. Public Policy And The Balancing Of Equities Weighs Heavily in Favor Of Injunctive Relief

The balance of equities in this case tips decidedly in Plaintiffs' favor. *Fund for Animals, Inc. v. Lujan*, 962 F.2d 1391, 1400 (9th Cir. 1992). Plaintiffs' right to an education comparable to other students who are not homeless has been severely disrupted. The continued disruption to the school environment will eliminate one of the potentially few stable features in the children's lives. In contrast, the burden on Defendants of an injunction is slight at best. The only "harm" to Defendants of being forced to comply with their statutory obligations would be the cost and effort of complying with a federal statute — something for which the federal government already provides funding (*see supra* at 19-20 discussing Delaware's superior implementation of the Act).

Furthermore, public policy strongly favors the issuance of an injunction. It cannot be reasonably disputed that the fair administration of the public school system, in a manner that does not discriminate against homeless children, is an important public goal. *See Lavelle v. Quinones*, 679 F.Supp. 253, 259 (E.D.N.Y. 1988) ("[M]aintenance of public confidence in the integrity of the administration of the schools is of concern to the entire city."). Accordingly, this Court should issue the requested injunctive relief.

V. NO SECURITY SHOULD BE REQUIRED

Waiver or imposition of a minimal bond is appropriate under Fed. R. Civ. P. 65(c) where, as here, a public interest organization is enforcing public rights on behalf of plaintiffs with limited resources. *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999). If Defendants ultimately are found to have been wrongly enjoined, any award of costs will be minimal. Plaintiffs request that the Court set the bond amount at zero, or, in the alternative, set a minimal bond of no more than \$100.00.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Preliminary Injunction should be granted in its entirety.

DATED: Honolulu, Hawaii, November 6, 2007.

/s/ William H. Durham
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