

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

HAWAIIAN KINGDOM,

Plaintiff,

vs.

JOSEPH ROBINETTE BIDEN, JR., in
his official capacity as President of the
United States; et al.,

Defendants.

Case No. CV 21-00243 LEK-RT
(Declaratory and Injunctive Relief)

MEMORANDUM IN SUPPORT OF
SUBSTANTIVE JOINDER

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I. INTRODUCTION

Defendants COUNTY OF HAWAI‘I (“Hawai‘i County”), MITCHELL ROTH, in his official capacity as Mayor of the County of Hawai‘i (“Mayor Roth”), and MAILE DAVID, in her official capacity as Chair of the Hawai‘i County Council (“Chair David”) (hereinafter collectively referred to as “Hawai‘i County Defendants”), by and through their attorneys, *substantively joins* in DEREK KAWAKAMI, ARRLY KANESHIRO, and COUNTY OF KAUA‘I’s (“Kaua‘i County Defendants”) argument that: (1) this Court lacks subject matter jurisdiction as required by Federal Rules of Civil Procedure (“FRCP”) Rule 12(b)(1); and (2)

Plaintiff HAWAIIAN KINGDOM (“Plaintiff”)¹ has failed to state facts entitling it to the relief it requests as required by FRCP Rule 12(b)(6).

Plaintiff filed its *Complaint for Declaratory and Injunctive Relief* filed on May 20, 2021 [ECF #1] (“*Complaint*”) alleging that: (1) the United States of America (“U.S.”) unlawfully annexed the Hawaiian Islands²; (2) the Kingdom of Hawai‘i (“Kingdom”) is, and has always been, a sovereign state; (3) the U.S. is currently occupying the Hawaiian Islands as an invading force; and (4) it is unlawful for the U.S., including the State of Hawai‘i and its counties, to impose its laws upon the citizens of Kingdom.

Based upon those claims, Plaintiff seeks: (1) a judicial declaration that all U.S. laws, including those of the State of Hawai‘i and its counties, are not authorized and in opposition to the U.S. Constitution and Treaties; (2) an order enjoining the U.S., including the State of Hawai‘i and its counties, from implementing and enforcing laws within the Hawaiian Islands, including judicial

¹ Though Plaintiff refers to itself as the “Hawaiian Kingdom” the record fails to demonstrate adequately this status and/or authority that Plaintiff actually represents the former government of the Kingdom of Hawai‘i. As such, the party bringing suit in this action will hereinafter be referred to as simply as “Plaintiff”, and references to the *historical* Kingdom of Hawai‘i will be referred to as the “Kingdom of Hawai‘i”, “Hawaiian Kingdom”, or “Kingdom.”

² Terms “Hawaiian Islands” and “Islands of Hawai‘i” is a geographic reference and not a political designation of islands that make up the archipelago currently within the territory of the State of Hawai‘i.

proceedings; (3) an order enjoining foreign diplomats from serving as foreign consulates within Hawaiian Islands; and (4) an award of additional relief as the interests and justice may require.

Hawai‘i County Defendants agree with Kaua‘i County’s Motion that: (1) Plaintiff lacks standing to bring this action; (2) Plaintiff has failed to allege facts entitling it to relief it seeks; and (3) the Court lacks subject matter jurisdiction to entertain Plaintiff’s nonjusticiable political question claims.³ Thus, if Kaua‘i County’s Motion is granted, Hawai‘i County Defendants respectfully request that the Court also grant this Substantive Joinder and similarly dismiss Plaintiff’s *Complaint* requesting declaratory and injunctive relief.

II. FACTUAL BACKGROUND

According to the *Complaint*, Plaintiff alleges, it, through the “Council of Regency”, operating as the Kingdom’s official representative, brought this action to “protect its officers of the Council of Regency” and “on behalf of all Hawaiian subjects and resident aliens that reside within the territorial jurisdiction of the [Hawaiian Islands].” *See Complaint*, at 5, ¶¶ 1-2, attached hereto as Exhibit “1”.

³ Kaua‘i County Defendants also asserted Qualified Immunity Doctrine, however Hawai‘i County Defendants decline to assert that basis at this time. *See Pearson v. Callahan*, 555 U.S. 223, 240, 129 S.Ct. 808, 819 (2009) (recognizing the difficulty in identifying the factual basis for plaintiff’s claims at the pleading stage when qualified immunity is asserted).

Plaintiff alleges the Kingdom “was illegally overthrown by the U.S. on January 17, 1893.” *Id.*, at 14, ¶ A. Plaintiff alleges they represent the sovereign state of the Kingdom and that the Kingdom is currently occupied by the U.S. government and as such it is the laws of the Kingdom, not the laws of the U.S., that should be administered until a “peace treaty brings the occupation to an end.” *Id.* at 17, ¶ 71.

III. ARGUMENT

Hawai‘i County Defendants join and incorporate by reference herein, the facts, arguments, and authorities submitted in conjunction with the Kaua‘i County’s Motion. Hawai‘i County Defendants join in the argument that: (1) Plaintiff lacks standing to bring this action; (2) Plaintiff has failed to allege facts entitling it to relief it seeks; and (3) the Court lacks jurisdiction to entertain Plaintiff’s non-justiciable political question claims.

A. Plaintiff Lacks Standing

The U.S. Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), stated that standing is:

Serv[ing] to identify those disputes which are appropriately resolved through the judicial process . . . is the doctrine of standing. Though some of its elements express merely prudential considerations that are part of judicial self-government, the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III.

Id. (citations omitted). Standing is a jurisdictional requirement that precedes an analysis of the merits of the claim. *Krottner v. Starbucks*, 628 F.3d 1139, 1141 (9th Cir. 2010). The three elements for standing are: (1) injury in fact; (2) causal connection between the injury and the conduct complained of; and (3) a likelihood that the injury will be redressed by a favorable decision. *Lujan*, 504 U.S. at 560-61.

Here, Plaintiff purports it represents a sovereign government, however, it fails to establish any legitimacy in that claim. Additionally, as Plaintiff is not a recognized foreign government, it is unable to demonstrate an “injury in fact” and by extension there is no causal connection between the injury complained of and the alleged conduct of Hawai‘i County Defendants. Therefore, Plaintiff’s claims are not redressable.

B. This Court Lacks Jurisdiction as Plaintiffs Claims Represent Nonjudicial Political Questions

“The principle that the courts lack jurisdiction over political questions that are by their nature ‘committed to the political branches to the exclusion of the judiciary’ is as old as the fundamental principle of judicial review.” *Schneider v. Kissinger*, 412 F.3d 190, 193 (D.C. Cir. 2005) (quoting *Antolok v. United States*, 873 F.2d 369, 379 (D.C. Cir. 1989) (opinion of Sentelle, J.)). In determining whether a case presents a nonjusticiable political question, the courts look for six factors: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and

manageable standards for resolving it; (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; (4) the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; or (6) the potentiality of embarrassment of multifarious pronouncements by various departments on one question. *Baker v. Carr*, 369 U.S. 186, 217 (1962). If any one of these factors is present, the Court may find that the question is political. *Schneider*, 412 F.3d at 194.

The federal courts have long recognized that the determination of sovereignty over a territory is fundamentally a political question beyond the jurisdiction of the courts. As the Supreme Court recognized in 1890:

Who is the sovereign, *de jure* or *de facto*, of a territory, is not a judicial, but a political, question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens, and subjects of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances.

Jones v. United States, 137 U.S. 202 (1890).

Analysis of the *Baker v. Carr* factors confirms that Plaintiff's claims present this Court with a nonjusticiable political question. Plaintiff's lawsuit challenges the United States' exercise of authority over the Hawaiian Islands following annexation. However, "[t]he conduct of the foreign relations of our Government is

committed by the Constitution to the Executive and Legislative—“the political”— Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision.” *Oetjen v. Cent. Leather Co.*, 246 U.S. 297, 302 (1918). In addition, the Constitution vests Congress with the “Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.” U.S. Const., Art. IV, § 3, cl. 2. Therefore, there is a textually demonstrable constitutional commitment of these issues to the political branches. Furthermore, it would be impossible for this Court to grant the relief requested by Plaintiff without disturbing a judgment of the legislative and executive branches that has remained untouched by the federal courts for over a century. Since its annexation in 1898 and admission to the Union as a State in 1959, Hawai‘i has been firmly established as part of the United States. The passage of time and the significance of the issue of sovereignty present an unusual need for unquestioning adherence to a political decision already made.

In the instant case, David Keanu Sai (“Mr. Sai”), purports to represent Plaintiff. *See Complaint*, at 6-7, at ¶ 7, (Exhibit “1”). Mr. Sai has brought similar actions in federal court that previously failed based on the political question and he even acknowledges this in the *Complaint*. *See Id.*, p. 46, at ¶ 102.

In *Sai v. Clinton*, 778 F.Supp.2d 1, 6 (D.C. Cir. 2011) (“*Sai I*”) the court held:

Although Plaintiff purports to assert three separate causes of action in his First Amended Complaint, each of Plaintiff’s claims is based on the assertion that the exercise of sovereignty by the United States over the Hawaiian Islands violates federal and international law the Court finds that it lacks jurisdiction over such claims because they present a nonjusticiable political question.

Id. Several years later in another action titled *Sai v. Trump*, 325 F.Supp.3d 68 (D.C. Cir. 2018) (“*Sai II*”), the court noted the prior decision in *Sai I*, stating “Although Sai relied on different legal theories in [*Sai I*], his purpose there was the same as his purpose here: to challenge the United States’ recognition of the ‘Republic of Hawaii as a sovereign entity’ and its ‘exercise of authority over Hawaii following annexation.’ ” *Sai II*, at 72. Mr. Sai attempted to preemptively address the political question in *Sai II*, however, the Court rejected his arguments as “determinations of sovereignty are not judicial functions, but instead rest with the executive **and** the legislative branches of government.” *Id.* at 73 (citing *Sai I*) (emphasis in original). *Sai II* ultimately held that “[b]ecause Sai’s claims involve a political question, this court is without jurisdiction to review his claims and the court will therefore DISMISS the petition.” *Id.*, at 74. Once again Plaintiff’s arguments fail to pass muster regarding the political question and thus this matter must also be dismissed.

IV. CONCLUSION

In sum, Hawai'i County Defendants respectfully request that this Honorable Court Grant their Substantive Joinder and dismiss Plaintiff's *Complaint* for lack of standing, failure to state facts entitling it to relief, and lack of subject matter jurisdiction due to a nonjusticiable political question.

Dated: Hilo, Hawai'i, July 6, 2021.

COUNTY OF HAWAI'I, MITCHELL ROTH, and
MAILE DAVID, Defendants

By /s/ Mark D. Disher

MARK D. DISHER

Deputy Corporation Counsel

Attorney for Hawai'i County Defendants