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

HAWAIIAN KINGDOM,

Plaintiff,

v.

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

Defendants.

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

MOTION TO ALTER OR AMEND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT NERVELL'S MOTION TO DISMISS [ECF 222] AND ORDER DENYING PLAINTIFF'S MOTION FOR JUDICIAL NOTICE [ECF 223]; MEMORANDUM OF AUTHORITIES IN SUPPORT OF MOTION; CERTIFICATE OF SERVICE

Non-Hearing Motion:
Judge: Leslie E. Kobayashi

MOTION TO ALTER OR AMEND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT NERVELL'S MOTION TO DISMISS [ECF 222] AND ORDER DENYING PLAINTIFF'S MOTION FOR JUDICIAL NOTICE [ECF 223]

COMES NOW Plaintiff HAWAIIAN KINGDOM, by and through Dexter K. Ka'iama, its counsel named hereinabove, and hereby moves for an Order to Alter or Amend the Court's Order Granting in Part and Denying in Part Defendant Nervell's Motion to Dismiss [ECF 222] filed herein on March 30, 2022 and Order Denying Plaintiff's Motion for Judicial Notice [ECF 223] filed herein on March 31, 2022. This Motion is made as instructed by Rules 52 and 59 of the Federal Rules of Civil Procedure and LR60.1 and is supported by the attached Memorandum of Authorities, and the entire files herein.

DATED: Honolulu, Hawai'i, April 11, 2022.

Respectfully submitted,

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

HAWAIIAN KINGDOM, Plaintiff, v. JOSEPH ROBINETTE BIDEN JR., in his official capacity as President of the United States; KAMALA HARRIS, in her official capacity as Vice-President and President of the United States Senate; ADMIRAL JOHN AQUILINO, in his official capacity as Commander, U.S. Indo-Pacific Command; CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service; et al., Defendants.	Civil No. 1:21:cv-00243-LEK-RT MEMORANDUM OF AUTHORITIES IN SUPPORT OF MOTION Non-Hearing Motion: Judge: Leslie E. Kobayashi

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MEMORANDUM OF AUTHORITIES IN SUPPORT OF MOTION

I. INTRODUCTION

The Hawaiian Kingdom respectfully moves this Court under Rule 59(e) of the Federal Rules of Civil Procedure for the Court to alter or amend its judgment dismissing without prejudice its claims against Defendant Nervell and its judgment denying judicial notice. First, the Court announced its decision in both Orders as a general verdict that the Hawaiian Kingdom does not exist as a State but did not provide any facts or conclusions of law explaining its reasoning. Second, the Hawaiian Kingdom requests the Court to re-open the case on partial findings pursuant to Rule 52(c) for the purpose of adjudicating Plaintiff's standing as a sovereign and independent State in continuity since the nineteenth century by having the Court provide findings of fact and conclusions of law that provides rebuttable evidence to the presumption of the continuity of the Hawaiian Kingdom as a sovereign and independent State.

> "The purpose of [Rule 52] is to require the trial judge to formulate and articulate his findings of fact and conclusions of law in the course of his consideration and determination of the case and as a part of his decision making process, so that he himself may be satisfied that he has dealt fully and properly with all the issues in the case before he decides it and so that the parties involved and this court on appeal may be fully

> informed as to the basis of his decision when it is made." *Roberts v. Ross,* 344 F.2d 747, 751 (3d Cir. 1965).

Because the Court's Order of March 30, 2022 [ECF 222], and its second Order of March 31, 2022 [ECF 223], violates international law as well as the separation of powers doctrine, the Court's Orders should be altered or amended, and instead the Court should provide findings of fact and conclusions of law, under Rule 52(c), that presumes the Hawaiian Kingdom as a State continues to exist unless the United States has provided, in these proceedings, rebuttable evidence under international law to the contrary, as hereafter explained, thereby correcting a clear error of law and preventing manifest injustice. The continuity of the Hawaiian Kingdom as a State precludes the political question doctrine from arising.

II. STATEMENT OF THE CASE

On March 30, 2022, the Court issued its Order Granting in part and denying in part Defendant Nervell's Motion to Dismiss. In its Order, the Court stated:

> Plaintiff argues that "[b]efore the Court can address the substance of [Nervell's] motion to dismiss it must first transform itself into an Article II Court…" [citation omitted] Plaintiff bases this argument on the proposition that the Hawaiian Kingdom is a sovereign and independent state. [citation omitted] This district has uniformly rejected such a proposition. [citation omitted] "'[T]here 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.'"

> [citation omitted] Plaintiff's request for the Court to "transform itself into an Article II Court" is therefore denied.

The Court admits that it could "transform itself into an Article II Court" but for "concluding that the [Hawaiian] Kingdom" does not exist as a State it could not. Conversely, if the Hawaiian Kingdom continues to exist as a State, the Court will then "transform itself into an Article II Court."

The Court later noted that "Plaintiff asserts its claim against Nervell in his official capacity as Honorary Consul of Sweden to Hawai'i. [citation omitted] Nervell argues that, because Plaintiff's claim is against him in his official capacity, the Court does not possess jurisdiction over him, pursuant to the Vienna Convention. [citation omitted] The Court agrees." The Hawaiian Kingdom at no time in these proceedings denied Sweden's appointment of Defendant Nervell as the Honorary Consul of Sweden to Hawai'i. Rather, the Plaintiff's position was that Defendant Nervell held an inchoate title as Honorary Consul because he did not receive his exequatur from the Hawaiian Foreign Ministry by virtue of Article XII of the 1852 Hawaiian-Swedish Treaty [ECF 129, p. 2]. Without accreditation by the Hawaiian Kingdom, Defendant Nervell cannot claim any "official capacity" under the Vienna Convention. Furthermore, Defendant Nervell provided no evidence that the 1852 Hawaiian-Swedish Treaty was replaced by the 1793 United States-Swedish Treaty, 8 Stat. 60. Plaintiff has not been fully heard on this subject.

On March 31, 2022, the Court issued its second Order Denying Plaintiff's Motion for Judicial Notice. The basis of the denial was the same in its previous Order that "'[t]here 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," and, therefore, "[t]he Ninth Circuit, this district court, and Hawai'i state courts have all held that the laws of the United States and the State of Hawai'i apply to all individuals in this State." Conversely, if the Hawaiian Kingdom continues to exist as a State, all "laws of the United States and the State of Hawai'i" do not apply within the territory of the Hawaiian Kingdom.

III. STANDARD OF REVIEW

Under LR60.1, motion seeking reconsideration of case-dispositive orders shall be governed by Federal Rules of Civil Procedure 59 or 60, as applicable. Motions for reconsideration for manifest error of law or fact must be filed and served within fourteen (14) days after the court's order is issued. Motions to amend or alter the judgment should be granted when there exists "a manifest error of law or fact, so as to enable the court to correct its own errors and thus avoid unnecessary appellate procedures." *Meghani v. Shell Oil Co.*, 2000 U.S. Dis. LEXIS 17402 *2, (S.D. Tex. Aug. 24, 2000) (citing *Divane v. Krull Elec. Co., Inc.*, 194 F.3d 845, 848 (7th Cir. 1999) (internal citations omitted)); see also Kyle v. Texas, 2006 WL 3691204 (W.D. Tex. Oct. 31, 2006) (granting a motion to reconsider under FED. R. CIV. P. 59(e)

and reversing the court's previous denial of a motion to remand based on a manifest error of law)). A court has discretionary authority to amend its prior decision. See *Weber v. Roadway Exp., Inc.*, 199 F.3d 270, 276 (5th Cir. 2000). So long as the Rule 59(e) motion is timely filed, the courts have considerable discretion. *E.E.O.C. v. Lockheed Martin Corp., Aero & Naval Systems*, 116 F.3d 110, 112 (4th Cir. 1997). Although the courts are not required to consider new legal arguments,[1] or mere restatements of old facts or arguments,[2] the court can and should correct clear errors in order to "preserve the integrity of the final judgment." *Turkmani v. Republic of Bolivia*, 273 F. Supp. 2d 45, 50 (D.D.C. 2002).

Reconsideration is particularly appropriate in this case because the Court's decision is based upon an argument that violates the separation of powers doctrine. Rule 59(e) permits a party to seek to correct manifest errors of law or fact or to prevent manifest injustice. *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989); *Barrow v. Greenville Indep. Sch. Dist.*, 3:00-CV-0913-D, 2005 WL 1867292, at *5 (N.D. Tex. Aug. 5, 2005).

Under Rule 52(c), a judgment may be taken against either a plaintiff or defendant with respect to issues or defenses and operates as a decision on the merits

[1] *Dist. Of Columbia v. Doe,* 611 F.3d 888, 896 (D.C. Cir. 2010).
[2] *State of New York v. United States,* 880 F.Supp. 37, 38 (D.D.C.1995).

in favor of the moving party. A judgment under Rule 52(c) is properly referred to as a Judgment on Partial Findings.

IV. ARGUMENT

A. THE COURT'S ORDERS SHOULD BE ALTERED OR AMENDED BECAUSE IT STANDS IN VIOLATION OF INTERNATIONAL LAW

In both Orders, the Court, by a general verdict, denies the existence of the Hawaiian Kingdom as a sovereign and independent State. The Court cites *U.S. Bank Tr., N.A. v. Fonoti*, Civil No. 18-00118 SOM-KJM, 2018 WL 3433295, at *10, but provides no evidential basis or reasoning of the rejection of the continuity of the Hawaiian Kingdom as a State, whether factual or legal. The *Fonoti* decision quotes *State v. French*, 77 Hawai'i 222, 228, 883 P.2d 644, 650 (Ct. App. 1994). Omitted from the quoted passage in the Order is the word "presently" that precedes "there is no factual (or legal basis) for concluding that the [Hawaiian] Kingdom exists as a state." Also omitted was the *French* Court's specific reference to *State of Hawai'i v. Lorenzo*, 77 Hawai'i 219; 883 P.2d 641, (Ct. App. 1994), where the Court stated, "this particular kind of claim was rejected in State v. Lorenzo, [internal citation omitted] which held that **presently** 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 (emphasis added)."

The *Lorenzo* Court clearly stated the reason for its rejection because "[i]t 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." *State of Hawai'i v. Lorenzo*, 220; 642. The reason for "presently" was because Lorenzo did not "present evidence supporting his claim." The Court did not foreclose the question but rather provided, what it saw at the time, instruction for the Court to arrive at the conclusion "that the [Hawaiian] Kingdom [continues] exists as a state" based on evidence of a "factual (or legal) basis." *Lorenzo's* standard of review in determining whether the Hawaiian Kingdom "exists as a state in accordance with recognized attributes of a state's sovereign nature" places the burden of proof on the Defendant.

The *Lorenzo* Court, however, acknowledged that its "rationale is open to question in light of international law." Because international law provides for the presumption of the continuity of the State despite the overthrow of its government by another State, it shifts the burden of proof. According to Judge Crawford, "[t]here is a presumption that the State continues to exist, with its rights and obligations […] despite a period in which there […] no effective government."[3] "Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State." [4] "If one were to speak about

[3] James Crawford, *The Creation of States in International Law* (2nd ed., 2006), 34.
[4] *Id.*

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, absent of which the presumption remains."[5] Therefore, the *Lorenzo* Court's placing of the burden on the Defendant is misplaced because international law places the burden "on the party opposing that continuity to establish the facts substantiating its rebuttal." The only fact the Defendant would need to provide is evidence that the United States recognized the Hawaiian Kingdom as a State, which would be the 1849 Treaty of Friendship, Commerce and Navigation, 9 Stat. 977. The Court provided no rebuttable evidence of facts in its Orders that the Hawaiian Kingdom was extinguished in accordance with international law.

In these proceedings, however, the Hawaiian Kingdom provided factual evidence of the Hawaiian Kingdom's "continued" existence, being a *juridical fact*, whereby the Permanent Court Arbitration, by a *juridical act*, acknowledged the Hawaiian Kingdom, in *Larsen v. Hawaiian Kingdom*, to be a non-Contracting "State" pursuant to Article 47 of the 1907 Hague Convention for the Pacific

[5] Matthew Craven, "Continuity of the Hawaiian Kingdom as a State under International Law," in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (2020), 128.

Settlement of International Disputes ("1907 PCA Convention"), 36 Stat. 2199. See Declaration of David Keanu Sai, Ph.D. [ECF 55-1], and Exhibit #1—Memorandum of Professor Federico Lenzerini, "Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration" [ECF 174-2]. From a legal basis see Declaration of Professor Federico Lenzerini [ECF 55-2], *Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom*, para. 1-6.

Additional factual basis of "continuity" includes the delivering of an oral statement to the United Nations Human Rights Council on March 22, 2022, by Dr. David Keanu Sai, as Minister of Foreign Affairs *ad interim*.[6] Dr. Sai was accredited by the Office of the United Nations High Commissioner for Human Rights for his statement. Dr. Sai stated to the Human Rights Council:

> The International Association of Democratic Lawyers and the American Association of Jurists call the attention of the Council to human rights violations in the Hawaiian Islands. My name is Dr. David Keanu Sai, and I am the Minister of Foreign Affairs *ad interim* for the Hawaiian Kingdom. I also served as lead agent for the Hawaiian Kingdom at the Permanent Court of Arbitration from 1999-2001 where the Court acknowledged the continued existence of my country as a sovereign and independent State.

[6] International Association of Democratic Lawyers, *Dr. Keanu Sai oral statement on the U.S. Occupation of Hawai'i to UN Human Rights Council* (March 22, 2022), https://www.youtube.com/watch?v=EinKf6QEUew.

> The Hawaiian Kingdom was invaded by the United States on 16 January 1893, which began its century long occupation to serve its military interests. Currently, there are 118 military sites throughout the islands and the city of Honolulu serves as the headquarters for the Indo-Pacific Combatant Command.
>
> For the past century, the United States has and continues to commit the war crime of usurpation of sovereignty, under customary international law, by imposing its municipal laws over Hawaiian territory, which has denied Hawaiian subjects their right of internal self-determination by prohibiting them to freely access their own laws and administrative policies, which has led to the violations of their human rights, starting with the right to health, education and to choose their political leadership.

The Defendant United States, who is a member State of the Human Rights Council, did not object to Dr. Sai's statement that "the United States has and continues to commit the war crime of usurpation of sovereignty, under customary international law, by imposing its municipal laws over Hawaiian territory," thereby, acquiescing to the Hawaiian Kingdom's continued existence as a State and the United States commission of the war crime of usurpation of sovereignty.

According to the International Court of Justice, acquiescence "concerns a consent tacitly conveyed by a State, unilaterally, through silence or inaction, in circumstance such that a response expressing disagreement or objection in relation

to the conduct of another State would be called for." *Case concerning the Temple of Preah Vihear* (Cambodia v. Thailand), Merits, Judgment of June 15, 1962, I.C.J. Reports 1962, p. 6, at 23. Under international law, the "function of acquiescence may be equated with that of consent," whereby the "primary purpose of acquiescence is evidential; but its value lies mainly in the fact that it serves as a form of recognition of legality and condonation of illegality and provides a criterion which is both objective and practical."[7]

The failure of the United States to disagree or object to the Hawaiian Kingdom being acknowledged as a non-Contracting State to the 1907 PCA Convention, by virtue of Article 47, and its failure to disagree or object to the statement to the Human Rights Council regarding the war crime of usurpation of sovereignty are official acts by the United States under customary international law. War crimes can only be committed in an international armed conflict between two or more States, and, therefore, the United States acquiescence are official acts that bind this Court. "[W]hen the executive branch of the government, which is charged with our foreign relations […] assumes a fact […] it is conclusive on the judicial department." *Williams v. Suffolk Insurance Co.*, 36 U.S. 415, 420 (1839). The assumption of the

[7] I.C. MacGibbon, "The Scope of Acquiescence in International Law," 31 *Brit. Y.B. Int'l L.* 143, 145 (1954).

aforementioned facts are confirmed by the United States' acquiesence and, therefore, "is conclusive" on this Court as evidential.

United States President John Tyler, by letter of Secretary of State John C. Calhoun on July 6, 1844, to Hawaiian officials, recognized the Hawaiian Kingdom as a sovereign and independent State. On December 20, 1849, Defendant United States entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom and maintained a Legation in Honolulu and Consulates throughout the islands. *Jones v. United States*, 137 U.S. 202, 212 (1890) ("Who is the sovereign, *de jure* or *de facto*, of a territory is not a judicial […] question.").

In its pleadings, the United States has not provided any rebuttable evidence, whether factual or legal, that the Hawaiian Kingdom was extinguished as a State under international law. Rather it pled that "[t]he United States annexed Hawaii [sic] in 1898 [Joint Resolution to provide for annexing the Hawaiian Islands to the United States, 30 Stat. 750 (1898)], and Hawaii [sic] entered the union as a state in 1959. Hawaii [sic] Admission Act, Pub. L. 86-4, 73 Stat. 4 (1959)."

Both the 1898 Joint Resolution of annexation and the 1959 Hawai'i Admission Act are municipal laws and cannot "extend beyond [U.S. territory] except so far as regards [U.S.] citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction." *The Apollon*, 22 U.S. 362, 370 (1824); *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936)

("[n]either the [federal] Constitution nor the [federal] laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens (citation omitted), and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law"; see also Douglas W. Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea," 12 *Op. O.L.C.* 238, 242, 252 (1988) ("we doubt that Congress has constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States. […] It is therefore unclear which constitutional power of Congress exercised when it acquired Hawaii by joint resolution."). "The clearest source of constitutional power to acquire territory is the treaty making power. Under the Constitution, the President 'shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur.' U.S. Const. art. II, §2, cl. 2. It is pursuant to that power that the United States has made most acquisitions of territory, as a result of either purchase or conquest." *Id.*, 247. Neither the Joint Resolution of annexation nor the Hawai'i Admission Act are treaties.

The failure of the United States to have extinguished Hawaiian Statehood under international law renders these laws as being unlawfully imposed within Hawaiian territory and in violation Article VIII of the 1849 Hawaiian-United States

Treaty, 9 Stat. 977, 979 ("and each of the two contracting parties engages that the citizens or subjects of the other residing in their respective states, shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but **subject always to the laws and statutes of the two countries respectively** (emphasis added)"), and Article 43 of the 1907 Hague Regulations, 36 Stat. 2277, 2306 ("[t]he 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** (emphasis added)"). According to Benvinisti,

> The occupant [State] may not surpass its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts. The reason for this rule is, of course, the functional symmetry, with respect to the occupied territory, among the various lawmaking authorities of the occupying state. Without this symmetry, Article 43 could become meaningless as a constraint upon the occupant, since the occupation administration would then choose to operate through extraterritorial prescription of its national institutions.[8]

[8] Eyal Benvinisti, *The International Law of Occupation* (1993), 19.

Furthermore, this Court's standing as an Article III Court is by virtue of the 1959 Hawai'i Admission Act. Section 9 states:

> Effective upon the admission of the State of Hawaii into the Union—
> (a) the United States District Court for the District of Hawaii established by and existing under title 28 of the United States Code shall thenceforth be a court of the United States with judicial power derived from article III, section 1, of the Constitution of the United States. 73 Stat. 8.

Under international law, the imposition of United States municipal laws violates the territorial integrity of the Hawaiian Kingdom, and, therefore, constitutes the war crime of usurpation of sovereignty under customary international law.[9] 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 going beyond those required by what is necessary for military purposes of the occupation."[10] And the *mens rea* would consist of where the "perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation."[11] According to Professor Schabas:

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[9] William Schabas, "War Crimes Related to the United States Belligerent 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* 155-157, 167 (2020).
[10] *Id.*, 167
[11] *Id.*, 168.

> There is no requirement for a legal evaluation by the perpetrator 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.[12]

In these proceedings, the United States pleading of reliance on its municipal laws is an admission of the war crime of usurpation of sovereignty and would appear to satisfy the *actus reus*—imposition of American municipal laws, and *mens rea*—awareness of the factual circumstances that established the existence of the armed conflict and subsequent occupation.

B. THE COURT'S ORDERS SHOULD BE ALTERED OR AMENDED BECAUSE IT IS IN VIOLATION OF THE SEPARATION OF POWERS DOCTRINE

The Supreme Court, in *Airports Auth. v. Citizens for Noise Abatement*, 501 U.S. 252, 272 (1991), explained, "[t]he structure of our Government as conceived by the Framers of our Constitution disperses the federal power among the three branches—the Legislative, the Executive, and the Judicial—placing both substantive and procedural limitations on each. The ultimate purpose of this separation of powers is to protect the liberty and security of the governed."

[12] *Id.*, 167.

Furthermore, "because every federal office must be located 'in' one of the three branches, each office is subject to whatever specific constitutional limitations apply to action by its branch."[13]

As the head of the executive branch, "the President alone has the power to speak or listen as a representative of the nation. He makes treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude, and Congress itself is powerless to invade it." *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936). Like the Congress, the judicial branch "is powerless to invade" the executive branch. The judicial branch is the arbiter of facts and law. It is not charged with foreign relations.

It would appear, *prima facie*, for the Court to take a declaratory position, without any evidential basis, that the Hawaiian Kingdom does not exist despite the official acts taken by the executive branch in the nineteenth and twenty-first centuries, is an invasion of the authority of the executive branch and a clear violation of the separation of powers doctrine.

V. CONCLUSION

For the reasons stated above, the Hawaiian Kingdom respectfully moves the Court to alter or amend the Order entered March 30, 2022, and the Order entered

[13] Thomas W. Merrill, "The Constitutional Principle of Separation of Powers," 1991 *The Supreme Court Review*, 225-260, 228.

March 31, 2022, and instead the Court should provide findings of fact and conclusions of law, under Rule 52(c), that provides rebuttable evidence as to the presumption of the continuity of the Hawaiian Kingdom as a State under international law, thereby correcting a clear error of law and preventing manifest injustice.

DATED: Honolulu, Hawai‘i, April 11, 2022.

Respectfully submitted,

/s/ Dexter K. Ka‘iama

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