DEXTER K. KA‘IAMA (Bar No. 4249)
DEPARTMENT OF THE ATTORNEY GENERAL, HAWAIIAN KINGDOM
1486 Akeke Place
Kailua, HI 96734
Telephone: (808) 284-5675
Email: attorneygeneral@hawaiiankingdom.org

Attorney for Plaintiff, Hawaiian Kingdom

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 THE FEDERAL DEFENDANTS’ CROSS-MOTION TO DISMISS THE FIRST AMENDED COMPLAINT [ECF 234]; MEMORANDUM OF AUTHORITIES IN SUPPORT OF MOTION; CERTIFICATE OF SERVICE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES:

United States

UNITED STATES STATUTES:

HAWAIIAN KINGDOM LAW:

RULES:

OTHER AUTHORITIES:

MOTION TO ALTER OR AMEND ORDER GRANTING THE FEDERAL DEFENDANTS' CROSS-MOTION TO DISMISS THE FIRST AMENDED COMPLAINT [ECF 234]

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 the Federal Defendants' Cross-Motion to Dismiss the First Amended Complaint [ECF 234] filed herein on June 9, 2022. This Motion is made as instructed by Rule 59(e) of the Federal Rules of Civil Procedure and is supported by the attached Memorandum of Points and Authorities.

A Rule 59(e) motion may be granted if the moving party demonstrates any of the following: (1) the judgment was based upon a manifest error of law or fact; (2) there is newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; and (4) there is an intervening change in controlling law.[1]

DATED: Honolulu, Hawai'i, June 15, 2022.

Respectfully submitted,

/s/ Dexter K. Ka'iama

DEXTER K. KA'IAMA (Bar No. 4249)
Attorney General of the Hawaiian Kingdom
DEPARTMENT OF THE ATTORNEY GENERAL, HAWAIIAN KINGDOM
Attorney for Plaintiff, Hawaiian Kingdom

[1] 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* §2810.1 (2nd ed. 1995).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

One year after the United States Congress passed the *Joint Resolution To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii*,[2] an appeal, was heard by the State of Hawai'i Intermediate Court of Appeals, that centered on a claim that the Hawaiian Kingdom continues to exist as a State. In *State of Hawai'i v. Lorenzo*,[3] the Intermediate Court of Appeals ("*Lorenzo* Court") stated:

> Lorenzo appeals, arguing that the lower court erred in denying his pretrial motion (Motion) to dismiss the indictment. The essence of the Motion is that the [Hawaiian Kingdom] (Kingdom) was recognized as an independent sovereign nation by the United States in numerous bilateral treaties; the Kingdom was illegally overthrown in 1893 with the assistance of the United States; the Kingdom still exists as a sovereign nation; he is a citizen of the Kingdom; therefore, the courts of the State of Hawai'i have no jurisdiction over him. Lorenzo makes the same argument on appeal. For the reasons set forth below, we conclude that the lower court correctly denied the Motion.[4]

The *Lorenzo* Court based its denial of the motion to dismiss the indictment on an evidentiary burden as described by the Ninth Circuit in its 1993 decision, in

[2] 107 Stat. 1510 (1993).
[3] *State of Hawai'i v. Lorenzo*, 77 Hawai'i 219; 883 P.2d 641 (Ct. App. 1994).
[4] *Id*., 220, 642.

United States v. Lorenzo, that "[t]he appellants have presented no evidence that the Sovereign Kingdom of Hawaii is currently recognized by the federal government."[5] As a result, the *Lorenzo* Court stated, it "was incumbent on Defendant to present evidence supporting his claim. *United States v. Lorenzo*. Lorenzo has presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature."[6] Neither the Ninth Circuit Court nor the *Lorenzo* Court foreclosed the question but rather provided, what it saw at the time, instruction for the courts to arrive at the conclusion that the Hawaiian Kingdom, from an evidentiary basis, exists as a State.

The *Lorenzo* Court's standard of review in determining whether the Hawaiian Kingdom exists as a State placed the burden of proof on Lorenzo as the defendant. The Hawai'i Supreme Court, in *State of Hawai'i v. Armitage*,[7] clarified this evidentiary burden. The Supreme Court stated:

> Lorenzo held that, for jurisdictional purposes, should a defendant demonstrate a factual or legal basis that the [Hawaiian Kingdom] "exists as a state in accordance with recognized attributes of a state's sovereign nature[,]" and that he or she is a citizen of that sovereign state, a defendant may be able to argue that the courts of the State of Hawai'i lack jurisdiction over him or her.[8]

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[5] *United States v. Lorenzo*, 995 F.2d 1448, 1456; 1993 U.S. App. LEXIS 10548.
[6] *State of Hawai'i v. Lorenzo*, 221; 643.
[7] *State of Hawai'i v. Armitage*, 132 Haw. 36, 57; 319 P.3d 1044, 1065 (2014).
[8] *Id*., 57; 1065.

II. THE *LORENZO* DOCTRINE

Lorenzo became a precedent case on the subject of the Hawaiian Kingdom's existence as a State in State of Hawai'i courts, and is known in the United States District Court in Hawai'i, since 2002, as the *Lorenzo* principle. A principle is a "comprehensive rule or doctrine which furnishes a basis or origin for others."[9] There have been seventeen federal cases that applied the *Lorenzo* principle ("Lorenzo doctrine"),[10] two of which came before the Ninth Circuit Court of Appeals. As the District Court stated in *United States v. Goo*:

> Since the Intermediate Court of Appeals for the State of Hawaii's decision in *Hawaii v. Lorenzo*, the courts in Hawaii have consistently adhered to the *Lorenzo* court's statements that the Kingdom of Hawaii is not recognized as a sovereign state [*4] by either the United States or the State of Hawaii. *See Lorenzo*, 77 Haw. 219, 883 P.2d 641, 643 (Haw. App. 1994); *see also State of Hawaii v. French*, 77 Haw. 222, 883 P.2d 644, 649 (Haw. App. 1994) (stating that "presently there is no factual (or legal) basis for concluding that the [Hawaiian] Kingdom

[9] Black's Law Dictionary, 1193 (6th ed., 1990).

[10] *United States v. Lorenzo*, 995 F.2d 1448; 1993 U.S. App. LEXIS 10548; *First Interstate Mortgage Co. v. Lindsey*, 1995 U.S. Dist. LEXIS 18172; *Hawaii v. Macomber*, 40 Fed. Appx. 499; 2002 U.S. App. LEXIS 12593; *United States v. Goo*, 2002 U.S. Dist. LEXIS 2919; *Villanueva v. Hawaii*, 2005 U.S. Dist. LEXIS 49280; *Shinn v. Norton*, 2006 U.S. Dist. LEXIS 111053; *Epperson v. Hawaii*, 2009 U.S. Dist. LEXIS 100045; *Kupihea v. United States*, 2009 U.S. Dist. LEXIS 59023; *Simeona v. United States*, 2009 U.S. Dist. LEXIS; *Baker v. Stehura*, 2010 U.S. Dist. LEXIS 93679; *Waialeale v. Officers of the United States Magistrate(s)*, 2011 U.S. Dist. LEXIS 68634; *Piedvache v. Ige*, 2016 U.S. Dist. LEXIS 152224; *Vincente v. Chu Takayama*, 2016 U.S. Dist. LEXIS 137959; *Kapu v. AG*, 2017 U.S. Dist. LEXIS 166103; *Mo'i Kapu v. AG*, 2017 U.S. Dist. LEXIS 73469; *U.S. Bank Tr., N.A. v. Fonoti*, Civil No. 18-00118 SOM-KJM, 2018 WL 3433295; *Megeso-William-Alan v. Ige*, 538 F. Supp. 3d 1063; 2021 U.S. Dist. LEXIS 91037.

> exists as a state in accordance with recognizing attributes of a state's sovereign nature") (quoting *Lorenzo*, 883 P.2d at 643). This court sees no reason why it should not adhere to the *Lorenzo* principle (emphasis added).[11]

The *Lorenzo* Court, however, did acknowledge that its "rationale is open to question in light of international law."[12] Whether or not the Hawaiian Kingdom "exists as a state in accordance with recognized attributes of a state's sovereign nature," it is international law that applies, not State of Hawai'i common law or municipal laws of the United States. While the existence of a State is a fact, a "State is not a fact in the sense that a chair is a fact; it is a fact in the sense in which it may be said a treaty is a fact; that is, a legal status attaching to a certain state of affairs by virtue of certain [international] rules or practices."[13] The civilian law refers to this type of a fact to be a *juridical fact*. According to Professor Lenzerini:

> In the civil law tradition, a juridical fact (or legal fact) is a fact (or event)—determined either by natural occurrences or by humans—which produces consequences that are relevant according to law. Such consequences are defined juridical effects (or legal effects), and consist in the establishment, modification or extinction of rights, legal situations or juridical (or legal) relationships (privity). Reversing the order of the reasoning, among the multifaceted natural or social facts occurring in the world a fact is juridical when it is legally relevant, i.e. determines the production of legal effects per effect of a legal (juridical) rule (provision). In technical terms, it is actually the legal rule which

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[11] *Goo*, *3.
[12] *State of Hawai'i v. Lorenzo*, 220; 642.
[13] James Crawford, *The Creation of States in International Law* 5 (2nd ed. 2006).

> produces legal effects, while the juridical fact is to be considered as the condition for the production of the effects. In practical terms, however, it is the juridical fact which activates a reaction by the law and makes the production of the effects concretely possible. At the same time, no fact can be considered as "juridical" without a legal rule attributing this quality to it.[14]

In *Larsen v. Hawaiian Kingdom*, the arbitral tribunal acknowledged the Hawaiian Kingdom as a *juridical fact* when it stated that in "the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[15]

III. DISTINGUISHING BETWEEN RECOGNITION OF A STATE AND RECOGNITION OF ITS GOVERNMENT

When the Ninth Circuit stated, in *United States v. Lorenzo*, however, that the "Sovereign Kingdom of Hawaii is [not] currently recognized by the federal government," the Court implied that the United States "derecognized" the Hawaiian Kingdom, which it had previously recognized. It would appear that the Ninth Circuit was confusing the recognition of government with the recognition of a State.

[14] Federico Lenzerini, *Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration* [ECF 174-1] 1 (5 December 2021).
[15] *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566, 581 (2001).

According to the *Restatement (Third) of the Foreign Relations Law of the United States*, §202, comment a:

> *Recognition of state and government distinguished*. Recognition of a state is a formal acknowledgment that the entity possesses the qualifications of statehood, and implies a commitment to treat the entity as a state. […] Recognition of a government is formal acknowledgment that a particular regime is the effective government of a state and implies a commitment to treat that regime as the government of the that state.

According to Professor Oppenheim, once recognition of a State is granted, it "is incapable of withdrawal"[16] by the recognizing State, and that "recognition estops the State which has recognized the title from contesting its validity at any future time."[17] The government of a State, however, may be de-recognized depending on factual or legal circumstances. Such was the case when President Jimmy Carter terminated the defense treaty with Taiwan after the government of Taiwan was de-recognized as the government of China.[18] In *Goldwater v. Carter*, the Supreme Court explained, "[a]brogation of the defense treaty with Taiwan was a necessary incident to Executive recognition of the Peking Government, because the defense treaty was predicated upon the now-abandoned view that the Taiwan Government was the only

[16] Lassa Oppenheim, *International Law* 137 (3rd ed. 1920).
[17] Georg Schwarzenberger, "Title to Territory: Response to a Challenge," 51(2) *American Journal of International Law* 308, 316 (1957).
[18] *Goldwater v. Carter*, 444 U.S. 996 (1979).

legitimate authority in China."[19] In the case of the non-recognition of the government of Cuba, the Supreme Court, in *Banco Nacional de Cuba v. Sabbatino*, stated:

> It is perhaps true that nonrecognition of a government in certain circumstances may reflect no greater unfriendliness than the severance of diplomatic relations with a recognized government, but the refusal to recognize has a unique legal aspect. It signifies this country's unwillingness to acknowledge that the government in question speaks as the sovereign authority for the territory it purports to control [citation omitted].[20]

The *Lorenzo* doctrine is NOT a matter of recognition of government but rather the recognition of the Hawaiian State as evidenced by the Hawaiian-American Treaty of Friendship, Commerce and Navigation.[21] There is no evidence that the Executive branch de-recognized the government of the Hawaiian Kingdom. Rather, President Grover Cleveland, head of the Executive branch, admitted to an illegal overthrow of the Hawaiian government by the United States military and vowed to restore that government. Therefore, as a *juridical fact*, the United States cannot simply derecognize the Hawaiian State. According to the *Restatement (Third) of the Foreign Relations Law of the United States*, §202, comment g:

> *Derecognition of a state*. The duty to treat a qualified entity as a state also implies that so long as the entity continues to meet those qualifications its statehood may not be "derecognized." If the entity ceases to meet those requirements, it ceases to be a state and

[19] *Id*., 1007.
[20] *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 411 (1964).
[21] 9 Stat. 977 (1841-1851).

> derecognition is not necessary. Ordinarily, that occurs when a state is incorporated into another state, as when Montenegro in 1919 became a part of the Kingdom of Serbs, Croats, and Slovenes (later Yugoslavia).

Furthermore, there is no legal requirement for the Council of Regency, being the successor in office to Queen Lili‘uokalani under the constitution and laws of the Hawaiian Kingdom, to get recognition from the United States as the government of the Hawaiian Kingdom. The United States recognition of the Hawaiian Kingdom as an independent State on July 6, 1844,[22] was also the recognition of its government—a constitutional monarchy, as its agent. Successors in office to King Kamehameha III, who at the time of international recognition was King of the Hawaiian Kingdom, did not require diplomatic recognition. These successors included King Kamehameha IV in 1854, King Kamehameha V in 1863, King Lunalilo in 1873, King Kalākaua in 1874, Queen Lili‘uokalani in 1891, the Council of Regency in 1997. The legal doctrines of recognition of new governments only arise “with extra-legal changes in government” of an existing State.[23] Successors to King Kamehameha III were not established through “extra-legal changes,” but rather under the constitution and laws of the Hawaiian Kingdom. According to the

[22] U.S. Secretary of State Calhoun to Hawaiian Commissioners (July 6, 1844) (online at: https://hawaiiankingdom.org/pdf/US_Recognition.pdf).
[23] M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice, 1815-1995* 26 (1997).

Restatement (Third) of the Foreign Relations Law of the United States, §203, comment c:

> *Recognition in cases of constitutional succession*. Where a new administration succeeds to power in accordance with a state's constitutional processes, no issue of recognition or acceptance arises; continued recognition is assumed.

IV. SHIFTING THE BURDEN OF PROOF IN THE *LORENZO* DOCTRINE

By placing the burden of proof on the defendant, the *Lorenzo* Court did not apply international law. The *Lorenzo* Court instead applied the rules of evidence where the State of Hawai'i courts are presumed to have jurisdiction over the subject matter unless the defendant has rebuttable evidence which is brought before the court by a motion to dismiss. Rule 304(b)—presumptions imposing burden of proof, Hawai'i Rules of Evidence, states:

> The effect of a presumption imposing the burden of proof is to require the trier of fact to assume the existence of the presumed fact [the State of Hawai'i's existence and the court's jurisdiction] unless and until evidence is introduced sufficient to convince the trier of fact of the nonexistence of the presumed fact.[24]

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 and what is to be proven. According to Judge Crawford, there "is a

[24] John Barkai, *Hawai'i Rules of Evidence* 7 (2018).

presumption that the State continues to exist, with its rights and obligations […] despite a period in which there is no, or no effective, government,"[25] and belligerent occupation "does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[26] "If one were to speak about a presumption of continuity," explains Professor Craven, "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."[27]

Evidence of "a valid demonstration of legal title, or sovereignty, on the part of the United States" would be an international treaty, particularly a peace treaty, whereby the Hawaiian Kingdom would have ceded its territory and sovereignty to the United States. Examples of foreign States ceding sovereign territory to the United States by a peace treaty include the 1848 *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*[28] and the 1898 *Treaty of Peace between*

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[25] Crawford, 34.
[26] *Id*.
[27] 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* 128 (2020).
[28] 9 Stat. 922 (1848).

the United States of America and the Kingdom of Spain.[29] The *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*,[30] is a municipal law of the United States without extraterritorial effect. It is not an international treaty. Annex "is to tie or bind[,] [t]o attach."[31] Under international law, to annex territory of another State is a unilateral act, as opposed to cession, which is a bilateral act between States. Under international law, annexation of an occupied State is unlawful. According to *The Handbook of Humanitarian Law in Armed Conflicts*:

> The international law of belligerent occupation must therefore be understood as meaning that the occupying power is not sovereign, but exercises provisional and temporary control over foreign territory. The legal situation of the territory can be altered only through a peace treaty or *debellatio*.[32] International law does not permit annexation of territory of another state.[33]

When the *Lorenzo* Court acknowledged that Lorenzo pled in his motion to dismiss the indictment that the Hawaiian Kingdom "was recognized as an independent sovereign nation by the United States in numerous bilateral treaties,"[34]

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[29] 30 Stat. 1754 (1898).
[30] 30 Stat. 750 (1898).
[31] Black's Law, 88.
[32] There was no extinction of the Hawaiian State by *debellatio* because the Permanent Court of Arbitration acknowledged the continued existence of the Hawaiian Kingdom as a State in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01.
[33] *The Handbook of Humanitarian Law in Armed Conflicts*, Section 525, 242 (1995).
[34] *State of Hawai'i v. Lorenzo*, 220; 642.

it set the presumption to be the Hawaiian Kingdom's existence as a State under international law and not the existence of the State of Hawai'i as a political subdivision of the United States. This would have resulted in placing the burden "on the party opposing that continuity to establish the facts substantiating its rebuttal." Under international law, it was not the burden of Lorenzo to provide evidence that the Hawaiian Kingdom "exists" when the *Lorenzo* Court already acknowledged its existence and recognition by the United States. Rather, it was the burden of the prosecution to provide evidence that the Hawaiian Kingdom "does not exist." Therefore, the *Lorenzo* Court erred and all decisions that followed in State of Hawai'i courts and Federal courts applying the *Lorenzo* doctrine also erred.

A proper application of the *Lorenzo* doctrine also renders the entire State of Hawai'i and its Counties as unlawful under international law. As the *Lorenzo* Court acknowledged, the "illegal overthrow leaves open the question whether the present governance system should be recognized (emphasis added)."[35] If the *Lorenzo* Court applied international law, it would have answered its own question in the negative as to "whether the present governance system should be recognized," and that a "state has an obligation not to recognize or treat as a state an entity that has attained the qualifications for statehood as a result of a threat or use of armed force."[36] In

[35] *State of Hawai'i v. Lorenzo*, 221; 643, n. 2.
[36] *Id*.

other words, the State of Hawai‘i cannot be recognized as a State of the United States, which arose as a result of a threat of armed force by the United States against the Hawaiian Kingdom.

V. THREAT OF ARMED FORCE BY THE UNITED STATES AGAINST THE HAWAIIAN KINGDOM

In 1893, President Grover Cleveland concluded that the provisional government, which is a predecessor of the State of Hawai‘i, “owes its existence to an armed invasion by the United States.”[37] Secretary of State Walter Gresham stated, the “Government of Hawaii surrendered its authority under a threat of war, until such time only as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign (emphasis added).”[38]

The President did not “reinstate the constitutional sovereign,” which allowed the insurgency to rename themselves from the provisional government to the so-called Republic of Hawai‘i on July 4, 1894.[39] The Congress renamed the Republic of Hawai‘i to the Territory of Hawai‘i under *An Act To provide a government for the Territory of Hawai‘i*, which states that the “‘laws of Hawaii,’ as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of

[37] United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai‘i: 1894-95*, 454 (1895).
[38] *Id*., 463.
[39] *Id*., 1350.

Hawaii."[40] The Congress later renamed the Territory of Hawai'i to the State of Hawai'i under *An Act To provide for the admission of the State of Hawaii into the Union*.[41] Therefore, all courts of the provisional government, the Republic of Hawai'i, the Territory of Hawai'i, the State of Hawai'i, and the United States District Court for the District of Hawai'i are unlawful pursuant to international law and the *Lorenzo* doctrine when international law is appropriately applied. Consequently, every judgment, order and decree that emanated from these courts are *void ab initio*—having no legal effect from inception.

In the State of Hawai'i Circuit Court for the Third Circuit, the Court acknowledged the repercussions after a defendant provided evidence of the Hawaiian Kingdom's existence as a State pursuant to the *Lorenzo* doctrine in *Wells Fargo Bank v. Kawasaki*.[42] With complete disregard of the *Lorenzo* doctrine, Circuit Judge Glenn Hara responded to the evidence with a "doomsday" scenario.

> THE COURT: No…Mr. Kaiama,…what you're asking the court to do is commit suicide, because once I adopt your argument, I have no jurisdiction over anything. Not only these kinds of cases where you claim either being…a citizen of the kingdom, but jurisdiction of the courts evaporate. All of the courts across the state, from the supreme court down, and we have no judiciary. I can't do that (emphasis added).

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[40] 31 Stat. 141 (1900).
[41] 73 Stat. 4 (1959).
[42] *Wells Fargo Bank v. Kawasaki*, civil no. 11-1-0106 (GSH) (Foreclosure-Ejectment), Transcript (15 June 2012) (online at: https://hawaiiankingdom.org/pdf/Wells_Fargo_Bank_v_Kawasaki_Transcripts.pdf .)

> Mr. KAIAMA: Your Honor—
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> THE COURT: I can't make that kind of a finding that basically it's, you know, like the atomic bomb for the judiciary (emphasis added).[43]

Justice Story argued there are doubts regarding the ability for States of the union, in this case the State of Hawai'i, to create and apply common law objectively. In *Martin v. Hunter's Lessee*, he stated:

> [A]dmitting that the judges of the state courts are, and always will be, of as much learning, integrity, and wisdom, as those courts of the United States, (which we cheerfully admit,) does not aid the argument. It is manifest that the constitution has proceeded on a theory of its own. […] The constitution has presumed (whether rightly or wrongly we do not inquire) that state attachments, state prejudices, state jealousies, and state interests might sometimes obstruct, or control, the regular administration of justice.[44]

According to Professor Tidmarsh, "Story thought that these questions of state objectivity especially explained the grant of diversity jurisdiction to the federal courts but that jurisdiction over federal questions, cases affecting ambassadors, [international relations,] and admiralty ultimately rested on 'reasons of a higher and more extensive nature, touching the safety, peace, and sovereignty of the nation.'"[45] In other words, the federal courts are supposed to hold a higher standard. The

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[43] *Id*., 13.
[44] *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 347-347 (1816).
[45] Jay Tidmarsh, "A Theory of Federal Common Law," 100(2) *Northwestern University Law Review* 585, 629 (2006).

Lorenzo doctrine, as federal common law in the Ninth Circuit, binds this Court to apply it correctly in accordance with international law.[46] The *Lorenzo* Court admitted it did not apply international law but could have, which is why the court stated its "rationale is open to question in light of international law."

Defendants that have provided an evidentiary basis for the Hawaiian Kingdom's existence as a State pursuant to the *Lorenzo* doctrine were not only subjected to "state prejudices, state jealousies, and state interest," but also, under international law, an unfair trial by courts that were never properly constituted in the first place. The *Lorenzo* court opened the door, and subsequent decisions of State of Hawai'i courts have tried to say the door was never opened in the first place. As Judge Hara tried to reason:

> THE COURT: [In *State of Hawai'i v. Lorenzo*, the Appellate Court] makes the comment basically that, um, you know, what—the—essence, I mean, it kinda left the door open by saying something to the effect, you know, there may be other facts or laws out there in the future that might change this.
>
> Now, I take his comments to mean—and all these things were in existence at that time—that what he's saying is, going forward, if there are any changes, if there are any new laws, if there are any, you know, uh, acts of congress, if there are any other kinds of act of judicial bodies that the court needs to—and—and the other political entities need to

[46] See *The Paquette Habana*, 175 U.S. 677, 700 (1900) ("[i]nternational law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination").

> respect and follow as law, um, then at that point we'll revisit what the effects are of being a citizen of the Kingdom of Hawaii is. So I'm taking all of what's happening right now and what you're arguing is kind of like res judicata. It's already been looked at. It's already been decided. And, based on that, they're saying that was not enough.
>
> MR. KAIAMA: Your Honor, if I may respectfully disagree.[47]

"New laws," "acts of Congress," "judicial bodies," and "other political entities," are not sources of international law that determine the existence of a State. According to *Restatement (Third) of the Foreign Relations Law of the United States*, §102, sources of international law include:

> (1) A rule of international law is one that has been accepted as such by the international community of states
> a) in the form of customary law;
> b) by international agreement; or
> c) by derivation from general principles common to the major legal systems of the world.
> (2) Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation.
> (3) International agreements create law for the state parties thereto and may lead to the creation of customary international law when such agreements are intended for adherence by states generally and are in fact widely accepted.
> (4) General principles common to the major legal systems, even if not incorporated or reflected in customary law or international agreement, may be invoked as supplementary rules of international law where appropriate.

[47] *Id*., 11.

VI. INTERNATIONAL LAW OF OCCUPATION

The doomsday scenario was not caused by defendants who were at the time complying with the *Lorenzo* doctrine, but rather is a result of the United States invasion of the Hawaiian Kingdom and its non-compliance with the rules of international humanitarian law for over a century. When United States troops invaded the Hawaiian Kingdom on January 16, 1893, an act of war was committed and transformed the state of affairs, under international law, from a state of peace to a state of war where the laws of war, also known as international humanitarian law, apply. The following day, when Queen Lili'uokalani conditionally surrendered to the United States and not to the insurgency, the law of occupation was triggered, which at the time was customary international law until it was codified by the 1907 Hague Regulations[48] and the 1949 Fourth Geneva Convention.[49] According to Article 42 of the Hague Regulations, the law of occupation would be triggered when the occupying State is in effective control of the territory of the occupied State. The Queen's conditional surrender gave effective control to the United States.

Article 43 of the Hague Regulations, which is a source of international law, provides that the "authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore,

[48] 36 Stat. 2277 (1907).
[49] 6 U.S.T. 3516 (1949).

and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."[50] Article 64 of the Fourth Geneva Convention states, the "penal laws of the occupied territory shall remain in force."[51]

The "text of Article 43," according to Professor Benvenisti, "was accepted by scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary international law."[52] Professor Graber also states that "nothing distinguishes the writing of the period following the 1899 Hague code from the writing prior to that code."[53] The United States government also recognizes that this principle is customary international law that predates the Hague Conventions. In a 1943 legal opinion, the United States stated:

> The Hague Convention clearly enunciated the principle that the laws applicable in an occupied territory remain in effect during the occupation, subject to change by the military authorities within the limits of the Convention. Article 43: […] This declaration of the Hague Convention amounts only to a reaffirmation of the recognized international law prior to that time.[54]

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[50] 36 Stat. 2277, 2306 (1907).
[51] 6.3 U.S.T. 3516, 3558 (1955).
[52] Eyal Benvenisti, *The International Law of Occupation* 8 (1993).
[53] Doris Graber, *The Development of the Law of Belligerent Occupation: 1863-1914*, 143 (1949).
[54] United States, Opinion on the Legality of the Issuance of AMG (Allied Military Government) Currency in Sicily, 23 Sept. 1943, reprinted in Occupation Currency Transactions: Hearings Before the Committees on Appropriations Armed Services and Banking and Currency, U.S. Senate, 80th Congress, First Session, 73, 75 (17-18 Jun. 1947).

Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention obliged the United States, as the occupying State, to administer the laws of the occupied State, the Hawaiian Kingdom. Since January 17, 1893, the United States did not administer Hawaiian Kingdom law, and since July 7, 1898, began to unlawfully impose its municipal laws over Hawaiian territory. The consequences of these acts have risen to the violation of peremptory norms—war crimes.[55]

By applying international law, the *Lorenzo* doctrine would have mandated changing the presumption from the courts being lawfully constituted to the courts not being lawfully constituted. As the trial court was not lawfully constituted, the prosecution of Lorenzo was void in the first place. According to Judge Moore, "[c]ourts that act beyond…constraints act without power; judgments of courts lacking subject matter jurisdiction are void—not deserving of respect by other judicial bodies or by the litigants,"[56] because "[i]f a person or body assumes to act as a court without any semblance of legal authority so to act and gives a purported judgment, the judgment is, of course, wholly void."[57]

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[55] 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*, 151-169 (2020).
[56] Karen Nelson Moore, "Collateral Attack on Subject Matter Jurisdiction: A Critique of the Restatement (Second) of Judgments," 66 *Cornell Law Review* 534, 537 (1981).
[57] *Restatement of the Law (Second) of Judgments*, 7(f), 45.

Mindful of the fact that Hawaiian Kingdom laws that existed prior to January 17, 1893, required legislation to bring these laws up to date, the Council of Regency proclaimed that all United States federal laws, State of Hawai‘i laws, and County ordinances "shall be the provisional laws of the Realm subject to ratification by the Legislative Assembly of the Hawaiian Kingdom once assembled, with the express proviso that these provisional laws do not run contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international humanitarian law, and if it be the case they shall be regarded as invalid and void."[58] According to Professor Lenzerini, it "may be concluded that, under international humanitarian law, the proclamations of the Council of Regency…have on the civilian population the effect of acts of domestic legislation aimed at protecting their rights and prerogatives, which should be, to the extent possible, respected and implemented by the occupying power.[59] Neither the United States nor the State of Hawai‘i has implemented the proclamations of the Council of Regency.

[58] *Proclamation of Provisional Laws of the Realm* (10 October 2014) (online at: https://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf).
[59] Federico Lenzerini, *Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom* [ECF 55-2], para. 14 (24 May 2020).

VII. CONCLUSION

Without citing any rebuttable evidence to the presumption of continuity of the Hawaiian State, the Court relied on *Fonoti*. This case, however, is not judge-made law or federal common law like *Banco Nacional de Cuba v. Sabbatino* regarding international relations. The *Fonoti* case was a decision that did not comply with the *Lorenzo* doctrine and, therefore, cannot be used by this Court as if it is federal common law. While the Court cited the *Fonoti* case in its granting of the Defendants' cross-motion to dismiss, which was based on the *Lorenzo* doctrine, albeit in error, the Court willfully disregarded international law and the *Lorenzo* doctrine to the detriment of the Plaintiff Hawaiian Kingdom, being a manifest error of law and fact and a manifest injustice. The Court has willfully avoided the *Lorenzo* doctrine that calls for evidence that the Hawaiian Kingdom does not exist "as a state in accordance with recognized attributes of a state's sovereign nature." The *Lorenzo* doctrine does not seek to determine whether the government of the Hawaiian State exists. Notwithstanding the restoration of the government of the Hawaiian State three years after *State of Hawai'i v. Lorenzo* in 1994 as a Council of Regency and Plaintiff in this case, the *Lorenzo* doctrine's evidentiary burden was not altered except by the application of international law.

The Court has provided no legal basis to grant Defendants' cross-motion to dismiss first amended complaint. Therefore, this Court is bound by treaty law to take

affirmative steps to transform itself into an Article II Court by virtue of Article 43 of the 1907 Hague Regulations, just as the International Bureau of the PCA established the arbitral tribunal by virtue of Article 47 of the 1907 *Hague Convention on the Pacific Settlement of International Disputes*[60] because of the *juridical fact* of the Hawaiian Kingdom's existence as a State.[61] This Court is also bound to transform itself into an Article II Court because it is situated within the territory of the Hawaiian Kingdom and not within the territory of the United States pursuant to the *Lorenzo* doctrine. Furthermore, Federal Defendants have provided no rebuttable evidence that the Hawaiian Kingdom as a State was extinguished under international law other than invoking its internal laws as justification for not complying with its international obligations, which are barred by customary international law and treaty law.

[60] 1907 *Hague Convention on the Pacific Settlement of International Disputes, I,* 36 Stat. 2199 (1907).
[61] 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] (December 5, 2021).

DATED: Honolulu, Hawai‘i, June 15, 2022.

Respectfully submitted,

/s/ Dexter K. Ka‘iama

DEXTER K. KA‘IAMA (Bar No. 4249)
Attorney General of the Hawaiian Kingdom
DEPARTMENT OF THE ATTORNEY GENERAL, HAWAIIAN KINGDOM

Attorney for Plaintiff, Hawaiian Kingdom