

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HAWAIIAN KINGDOM,)	
)	
Plaintiff-Appellant,)	
)	No. 22-15637
v.)	
)	
JOSEPH R. BIDEN, in his official capacity)	
as President of the United States, et al.,)	
)	
Defendants-Appellees.)	
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**FEDERAL APPELLEES’ RESPONSE
TO THE APPELLANT’S RESPONSE TO THE
COURT’S ORDER TO SHOW CAUSE**

The federal appellees – the United States; Joseph Biden, Jr. in his official capacity as President of the United States; Kamala Harris, in her official capacity of Vice President of the United States; Charles Rettig, in his official capacity as the Commissioner of the Internal Revenue Service; Admiral John Aquilino, in his official capacity as the Commander of Indo-Pacific Command; Charles Schumer, in his official capacity as the Senate Majority Leader; and Nancy Pelosi, in her official capacity as the Speaker of House – hereby provide their response to the motion that the Hawaiian Kingdom has filed in response to this Court’s order to show cause dated May 3, 2022.

On April 24, 2022, the Hawaiian Kingdom filed a notice of appeal challenging three orders of the district court: (a) an order entered on March 30, 2022, granting

in part and denying in part a motion filed by only one of the numerous consular defendants to dismiss the complaint; (b) an order entered on March 31, 2022, denying the Hawaiian Kingdom's motion for judicial notice; and (c) an order entered on April 19, 2022, denying the Hawaiian Kingdom's motion for reconsideration of the first two orders and its motion to alter or amend those two orders, two motions that the district court described as "virtually identical." April 19 Order at 1.

This Court's order to show cause stated that the Court may lack jurisdiction over the appeal because the district court's orders challenged in the appeal may not be final or appealable. The order directed the Hawaiian Kingdom, within 21 days, either to move for voluntary dismissal of the appeal or to show cause why it should not be dismissed for lack of jurisdiction.

Rather than attempt to justify its assertion of appellate jurisdiction, the Hawaiian Kingdom has moved to dismiss its appeal purportedly under the doctrine of forum non conveniens, arguing that "the proper forum under international humanitarian law is an Article II Appellate Court unless the United States provides rebuttable evidence that the Hawaiian Kingdom was extinguished under international law, i.e., treaty of cession." Motion at 8.

However, it is entirely unnecessary for this Court to address any of the issues raised in the Hawaiian Kingdom's motion, because the answer to the jurisdictional question actually posed in the order to show cause is straightforward. The orders

that the Hawaiian Kingdom sought to appeal are non-final, because they do not dispose of all claims against all parties. On this basis alone, this Court should dismiss the appeal.

Section 1291 states that “[t]he courts of appeals * * * shall have jurisdiction of appeals from all final decisions of the district courts of the United States * * *.” 28 U.S.C. 1291. Unless a district court “direct[s] entry of a final judgment as to one or more, but fewer than all, claims or parties” with an express determination “that there is no just reason for delay,” “any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties” and is not final for purposes of appeal, in that it “may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.” Rule 54(b), Fed. R. Civ. P.

“If a district court’s order does not dispose of all claims against all parties, there is no ‘final order’ within the meaning of 28 U.S.C. § 1291.” Ethridge v. Harbor House Rest., 861 F.2d 1389, 1402 (9th Cir. 1988). There are “substantial finality interests § 1291 is meant to further: judicial efficiency, for example, and the sensible policy of avoiding the obstruction to just claims that would come from permitting the harassment and cost of a succession of separate appeals from the various rulings to which a litigation may give rise.” Will v. Hallock, 546 U.S. 345, 350 (2006)

(cleaned up).

The three orders on appeal do not even come close to disposing of all claims against all parties. The March 30 order related to a motion filed by only one of the numerous consular defendants. The March 31 order simply denied the Hawaiian Kingdom's motion for judicial notice. And the April 19 order denied the Hawaiian Kingdom's motion for reconsideration of the two previous orders and the motion to alter or amend the orders. These three orders are not final within the meaning of section 1291.

For the foregoing reasons, we respectfully request that the Court dismiss the appeal for lack of appellate jurisdiction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this motion is proportionately spaced, using Times New Roman, 14 point font. Based on a word count under Microsoft Word 2016, the body of this response contains 781 words.

/s/ Edward Himmelfarb

Edward Himmelfarb
Attorney for the Federal Appellees

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2022, I electronically filed the foregoing document by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Edward Himmelfarb

Edward Himmelfarb
Attorney for the Federal Appellees