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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HAWAIIAN KINGDOM

Plaintiff,

vs.

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

Defendants.

CIVIL NO. 1:21:cv-243-LEK-RT

FEDERAL GOVERNMENT
DEFENDANTS' REPLY IN
SUPPORT OF THEIR CROSS-
MOTION TO DISMISS THE FIRST
AMENDED COMPLAINT

**FEDERAL GOVERNMENT DEFENDANTS'
REPLY IN SUPPORT OF THEIR CROSS-MOTION
TO DISMISS THE FIRST AMENDED COMPLAINT**

Plaintiff Hawaiian Kingdom’s opposition, ECF No. 204 (“Pl.’s Opp.”), to the motion to dismiss filed by the federal government Defendants, ECF No. 188 (“Defs.’ MTD”), reasserts Plaintiff’s arguments that the Hawaiian Kingdom is an independent state, Pl.’s Opp. at 6–10; that Hawaii’s annexation by the United States in 1898 is illegitimate and in violation of international law, *id.* at 11–15; that the “internal law” of the United States (that is, federal law) is not applicable because the United States is unlawfully occupying Hawaii, *id.* at 16–18; and that the Court must “transform itself” into an “Article II Court” so it can adjudicate Plaintiff’s claims under customary international law and various treaties, *id.* at 20. Federal courts have repeatedly characterized the concept of “Hawaiian sovereignty” underlying all of these arguments as frivolous. Defs.’ MTD at 5–6 & n.3. Accordingly, this Court has no jurisdiction to entertain Plaintiff’s claims, or to remedy any of Plaintiff’s alleged harms.

The primary authority cited as support for Plaintiff’s theory remains Prof. Lenzerini’s interpretation of the significance of the decision by the International Bureau of the Permanent Court of Arbitration (“PCA”) to institute an arbitration involving Plaintiff. Pl.’s Opp. at 18–19. The arbitral award explicitly rejects this inference. It demonstrates that the PCA refused to reach a conclusion about

Plaintiff's sovereignty.¹ Nonetheless, even if Plaintiff's interpretation of the PCA's actions were correct, it would not matter. The questions raised by Plaintiff and Prof. Lenzerini are classic political questions about the recognition of state sovereignty that the Court has no jurisdiction to answer. Defs.' MTD at 6–7.

Plaintiff otherwise fails to address the numerous problems with the first amended complaint identified in the motion to dismiss. Plaintiff also does not dispute that the jurisdictional defects of the first amended complaint apply to all Defendants, and that the Court may act to dismiss the complaint in its entirety if it concludes it has no jurisdiction to hear this case. *See* Fed. R. Civ. P. 12(h)(3). That includes dismissal of the foreign consular officers, whom the federal government has a significant interest in protecting from suit in federal court over the performance of their consular functions. *See* Defs.' MTD at 14; Statement of Interest of the United States of America, ECF No. 164, at 9–15.

Accordingly, for the reasons stated herein and in the motion to dismiss, the Court should grant the motion and dismiss the first amended complaint in this case

¹ *Larsen* Arbitration Award, ECF No. 188-2, at § 8 (noting that, because “the continuing status of the Hawaiian Kingdom after 1898 would or might be an issue,” the International Bureau “declined to allow the arbitration to be conducted” unless it proceeded under rules which do not require one of the parties to be a state); *id.* at § 12.18 (declining to decide that “whether Hawaii is not a part of the United States nor proceed on the assumption that it is not”).

as to all Defendants, including the federal government Defendants.

DATED: February 11, 2022

Respectfully submitted,

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/s/ Michael J. Gerardi
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