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IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAWAIIAN KINGDOM,

Plaintiff-Appellant,

v.

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

Defendants-Appellees.

No. 22-15637

D.C. No. 1:21-cv-00243-LEK-RT

PLAINTIFF-APPELLANT HAWAIIAN KINGDOM’S REPLY IN SUPPORT OF MOTION TO DISMISS FOR *FORUM NON CONVENIENS* AND PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAI‘I; EXHIBITS “1-8”; CERTIFICATE OF SERVICE

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Federal Appellees' response to Plaintiff-Appellant HAWAIIAN KINGDOM's motion to dismiss for *forum non conveniens*, reasserts Federal Appellees' baseless arguments that the United States District Court for the District of Hawai'i is properly constituted as an Article III Court with subject matter jurisdiction; that the "orders that the Hawaiian Kingdom sought to appeal are non-final, because they do not dispose of all claims against all parties," Federal Appell. Opp. at 2; and that "this court should dismiss the appeal," *Id*., at 3. Substantial finality interests, as argued by Federal Appellees, stem from a court that is regularly constituted. The District Court is not properly constituted because it sits within the territory of the Hawaiian Kingdom.

Since the amended complaint was filed on August 11, 2021, the legal standing of the Court was at issue, which the Court acknowledged in its Order granting motion for leave to file amended *amicus curiae* brief on why the Court must transform itself into an Article II occupation court [ECF 90]. The *amici* filed their *amicus curiae* brief on October 6, 2021. It its two Orders of May 30, 2022 [ECF 222] and May 31, 2022 [ECF 223], that Federal Appellees refer to in their response, Federal Appell. Opp. at 2 & 3, the Court acknowledges its legal standing is at issue. 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…' [Mem. in Opp. at 19-20.] Plaintiff bases this argument on the proposition that the Hawaiian Kingdom is a sovereign and independent state. See id., at 4." The Court also stated, "[t]o support this argument, Plaintiff relies on an *amici curiae* brief filed in the instant case." *Id*., n. 4.

The Court then applied the *Lorenzo* principle in error, see MTD for *Forums Non Conveniens* [Dkt 10-1], at 9-12, by citing "*U.S. Bank Tr., N.A. v. Fonoti*, Civil No. 18-00118 SOM-KJM, 2018 WL 3433295, at *10 (D. Hawai'i June 29, 2018 ('[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.'" (some alternations in Fonoti) (quoting *State v. French*, 77 Hawai'i 222, 228, 883 P.2d 644, 650 (Ct. App. 1994)))." *Id*. *State v. French* cites *State of Hawai'i v. Lorenzo*. The Court then concluded "Plaintiff's request for the Court to 'transform itself into an Article II Court' is therefore denied." *Id*. In its Order Denying Plaintiff's Motion for Judicial Notice [ECF 223], the Court also applied the *Lorenzo* principle in error by citing *Fonoti* and *French*. Without first being properly constituted, the Court is *ultra virus*, and its Orders are an unlawful usurpation of power because the Court was never properly constituted in the first place because it is situated outside of the United States.

A proper application of the *Lorenzo* principle, in light of international law, shifts the presumption to the continuity of the Hawaiian State and, therefore, the burden of proof falls upon Federal Appellees to provide rebuttable evidence, i.e. treaty, that the Hawaiian Kingdom is not an independent State under international law absent of which the presumption of continuity remains. See, e.g. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 423 (1964) ("it is, of course, true that United States courts apply international law as a part of our own in appropriate circumstances"); *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"); *The Nereide*, 13 U.S. 388 (1815) (Marshall, C.J.) ("[t]he Court is bound by the law of nations which is a part of the law of the land"); *Restatement (Third) of the Foreign Relations Law of the United States*, §111(3) ("customary international law must be enforced in U.S. courts even in the absence of implementing legislation or whether they appear in a treaty"); see also *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981) recognizing that "international disputes implicating…our relations with foreign nations" are one of the "narrow areas" in which "federal common law" continues to exist).

The *Lorenzo* principle is federal common law, and this Court should compel Federal Appellees, in an evidentiary hearing, "to provide evidence rebutting the presumption of continuity of the Hawaiian Kingdom as a State under international law." MTD for *Forum Non Conveniens* [Dkt 10-1], at 19. The Federal Appellees have not provided any rebuttable evidence except for arguing, by municipal laws, that "[t]he United States annexed Hawaii in 1898, [*Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, 30 Stat. 750 (1898)] and Hawaii entered the union as a state in 1959. Hawaii Admission Act, Pub. L. 86-4, 73 Stat. 4 (1959)." Federal Government Defendants' Memo in Opp. [ECF 188-1], at 2. According to the *Lorenzo* principle, the presumption of the continuity of the Hawaiian Kingdom as a State remains. The Federal Appellees cannot simply ignore international law and federal common law, especially when the Plaintiff-Appellant HAWAIIAN KINGDOM provided a factual and legal basis for the Hawaiian Kingdom's existence as a State in its amended complaint [Dkt 10-2], which the Federal Appellees have not denied.

This is a case of first impression whereby the *Lorenzo* principle, as federal common law, has not been applied correctly. Therefore, pursuant to international law and the *Lorenzo* principle, Plaintiff-Appellant HAWAIIAN KINGDOM hereby petitions this Court for a Writ of Mandamus. This request is brought pursuant to the All Writs Act, 28 U.S.C. §1651(a) conferring the power of mandamus on federal

appellate courts. *LaBuy v. Howes Leather Co.*, 352 U.S. 249 (1957). Mandamus is appropriate to confine an inferior court to a lawful exercise of prescribed jurisdiction, or when there is a usurpation of judicial power. See *Schlagenhauf v. Holder*, 379 U.S. 104 (1964).

DATED: Honolulu, Hawai‘i, June 2, 2022.

Respectfully submitted,

/s/ Dexter K. Ka‘iama

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PETITION FOR WRIT OF MANDAMUS

STATEMENT OF THE RELIEF SOUGHT

Plaintiff-Appellant HAWAIIAN KINGDOM respectfully petitions this Court pursuant to Article 43, 1907 Hague Regulations, 36 Stat. 2277, 2306 (1907), Article 64, 1949 Fourth Geneva Convention, 6.3 U.S.T 3516, 3558 (1955), the All Writs Act, 28 U.S.C. §1651, *State of Hawai'i v. Lorenzo* (hereafter "*Lorenzo* Court"), 77 Hawai'i 219; 883 P.2d 641 (Ct. App. 1994), known by the United States District Court for the District of Hawai'i as the *Lorenzo* principle, which is federal common law, attached hereto as Exhibit "1," and Federal Rule of Appellate Procedure 21, for a writ of mandamus to compel the United States District Court for the District of Hawai'i to transform into an Article II Occupation Court in *Hawaiian Kingdom v. Biden, et al*., D.C. No. 1:21-cv-00243-LEK-RT.

ISSUE PRESENTED

Whether Petitioners are entitled to have the United States District Court for the District of Hawai'i, which is situated outside of United States territory, transform into Article II Occupation Court. Additionally, whether the Ninth Circuit has the authority to transform its Appellate Courts in Honolulu, which are situated outside of United States territory, into Article II Occupation Appellate Courts.

INTRODUCTION

U.S. District Court Judge Leslie Kobayashi is the presiding judge of the civil case *Hawaiian Kingdom v. Biden, et al*., D.C. No. 1:21-cv-00243-LEK-RT. In her Orders Granting in Part and Denying in Part Defendant Nervell's Motion to Dismiss [ECF 222] and Denying Plaintiff's Motion for Judicial Notice [ECF 223], which are attached hereto as Exhibits "2" and "3," the District Court failed to adhere international law and to the *Lorenzo* principle, which is federal common law. A writ of mandamus should, therefore, correct a manifest error. The Court's Orders are an unlawful usurpation of power by a federal court situated in the territory of the Hawaiian Kingdom.

STATEMENT OF FACTS

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 Hawai'i, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii*, 107 Stat. 1510, 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. The *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. *Lorenzo*, 220, 642.

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. Black's Law Dictionary, 1193 (6th ed., 1990) (a principle is a "comprehensive rule or doctrine which furnishes a basis or origin for others"). There have been seventeen federal cases that applied the *Lorenzo* principle,[1] two of which have come before the Ninth Circuit. As the District Court stated, in *United States v. Goo*, 2002 U.S. Dist. LEXIS 2919 *3:

[1] *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.

> 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 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).

The *Lorenzo* Court clearly based its evidentiary burden as described by the Ninth Circuit in its 1993 decision, in *United States v. Lorenzo*, 995 F.2d 1448, 1456; 1993 U.S. App. LEXIS 10548, **20, ("[t]he appellants have presented no evidence that the Sovereign Kingdom of Hawaii is currently recognized by the federal government."). As a result, the *Lorenzo* Court stated, "[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 […]." *Lorenzo*, 220; 642. The reason for "presently" was because Lorenzo did not "present evidence supporting his claim." Neither the Ninth Circuit Court nor the *Lorenzo* Court foreclosed the question but rather provided, what it saw at the time, instruction for the Court 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*, 132 Haw. 36; 319 P.3d 1044 (2014), 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 foreign 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. *Id*., 57; 1065.

The *Lorenzo* Court, however, did acknowledge that its "rationale is open to question in light of international law," *Lorenzo*, 220; 642. When the status of a State is in question, it is international law that applies, not common law. 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." James Crawford, *The Creation of States in International Law* 5 (2nd ed., 2006). The civilian law refers to this type of a fact to be a *juridical fact*. According to Professor Lenzerini, *Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration* [ECF 174-2, 1], attached hereto as Exhibit "4":

> 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 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.

In *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566, 581 (2001), the arbitral tribunal acknowledged the Hawaiian Kingdom as a *juridical fact* ("[i]n 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."). 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. As a *juridical fact*, the United States cannot simply derecognize the Hawaiian State. In *Restatement (Third) of the Foreign Relations Law of the United States*, §202, comment g:

> 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 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).

By placing the burden of proof on the defendant, the *Lorenzo* Court did not apply international law. The *Lorenzo* Court applied Rule 304(b)—Presumptions imposing burden of proof, *Hawai'i Rules of Evidence* (2018):

> 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.

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 would be proven. 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 is no, or no effective, government." Crawford, 34. "Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State." *Id*.

"If one were to speak about 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." 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).

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

Evidence of "a valid demonstration of legal title, or sovereignty, on the part of the United States" would be a peace treaty whereby the Hawaiian Kingdom ceded

its territory and sovereignty to the United States. Examples of foreign States ceding territory to the United States by a peace treaty include the *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*, 9 Stat. 922 (1848), and the *Treaty of Peace between the United States of America and the Kingdom of Spain*, 30 Stat. 1754 (1898). The *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, 30 Stat. 750 (1898), is a municipal law of the United States. It is not a peace treaty. Annex "is to tie or bind […] [t]o attach." Black's Law, 88. 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 a State is unlawful. According to *The Handbook of Humanitarian Law in Armed Conflicts*, Section 525, 242 (1995):

> 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*.[2] International law does not permit annexation of territory of another state.

A proper application of the *Lorenzo* principle also renders the entire State of Hawai'i and its Counties as unlawful under international law. As the *Lorenzo* Court

[2] 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.

acknowledged, "[t]he illegal overthrow leaves open the question whether the present governance system should be recognized […]." *Id*., 221; 643, n. 2. 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." *Id*. In other words, the State of Hawai'i cannot be recognized as a State of the United States, which arose "as a result of a […] use of armed force."

In the State of Hawai'i Circuit Court for the Third Circuit, the Court acknowledged the consequences of the *Lorenzo* principle when a defendant provided evidence of the Hawaiian Kingdom's existence as a State as revealed in the transcript of the proceedings, *Wells Fargo Bank v. Kawasaki*, civil no. 11-1-0106 (GSH) (Foreclosure-Ejectment), Transcript, (June 15, 2012), p. 13, which is attached hereto as Exhibit "5." The Court counters 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).
>
> Mr. KAIAMA: Your Honor—

> 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).

Defendants that have provided an evidentiary basis for the Hawaiian Kingdom's existence as a State pursuant to the *Lorenzo* principle were subjected to 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 tried to say the door was never opened in the first place. As Judge Glenn 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 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. *Id*., p. 11.

"New laws," "acts of Congress," "judicial bodies," and "other political entities," are not sources of international law that determine the existence of a State. The "doomsday" scenario was not caused by defendants who were at the time complying with the *Lorenzo* principle, but rather is a result of the United States invasion of the Hawaiian Kingdom and its non-compliance with the rules of international law for over a century.

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." United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 454 (1895). Secretary of State Walter Gresham stated, "[t]he 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." *Id*., 463.

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. *Id*., 1350. 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*, 31 Stat. 141 (1900) ("'laws of Hawaii,' as used in this Act without qualifying words, shall mean the constitution and laws of

the Republic of Hawaii."). 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*, 73 Stat. 4 (1959). 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* principle. Consequently, every judgment, order and decree that emanated from these Courts are *void ab initio*—having no legal effect from inception. By applying international law, the *Lorenzo* principle would have changed 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.

"If 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." *Restatement of the Law (Second) of Judgments*, 7(f), 45. "Courts 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." Karen Nelson Moore, "Collateral Attack on Subject Matter Jurisdiction: A Critique of the Restatement (Second) of Judgments," 66 *Cornell Law Review* 534, 537 (1981).

Furthermore, courts who were made aware of the American occupation prior to their decisions would have met the constituent elements of the war crime of depriving a protected person of a fair and regular trial.[3] See 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* 164-165, 169 (2020), ("[t]he *actus reus* of the war crime of deprivation of the right of fair and regular trial consists of depriving one or more persons of fair and regular trial by denying judicial guarantees recognized under international law, including those of the fourth Geneva Convention and the International Covenant on Civil and Political Rights. The *mens rea* requires that the accused person acted intentionally and with knowledge that the person allegedly deprived of the right to fair trial was a civilian of the occupied territory"). Common Article 3 of the Fourth Geneva Convention prohibits "the passing of sentences […] without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

[3] Available online at: https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf.

ARGUMENT

THIS COURT SHOULD ISSUE A WRIT OF MANDAMUS BECAUSE JUDGE KOBAYASHI IS BOUND BY TREATY LAW AND THE *LORENZO* PRINCIPLE

International law places the Ninth Circuit in a unique situation—*sui generis*. As dire the situation might appear, there are remedial prescriptions allowable under international humanitarian law and the doctrine of necessity for the Ninth Circuit Court to consider to prevent a complete dissolution of the current judicial system of both federal and State of Hawai‘i courts. 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 and the 1949 Fourth Geneva Convention.

Article 43 of the Hague Regulations provides that “[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.” The “text of Article 43,” according to Benvenisti, “was accepted by

scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary international law." Eyal Benvenisti, "Origins of the Concept of Belligerent Occupation," 26(3) *Law and History Review* 645 (2008). Graber also states, that "nothing distinguishes the writing of the period following the 1899 Hague code from the writing prior to that code." Doris Graber, *The Development of the Law of Belligerent Occupation: 1863-1914*, 143 (1949). 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.[4]

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

[4] 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).

unlawfully impose its municipal law over Hawaiian territory. The consequences of these acts are now before the Ninth Circuit Court.

Mindful of the situation in the Hawaiian Islands, the Council of Regency proclaimed provisional laws for the Hawaiian Kingdom whereby all United States 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 (attached hereto as Exhibit “6.)” A copy of which is in “Proclamation: Provisional Laws of the Realm,” in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 229, 231 (2020); see also Declaration of Professor Federico Lenzerini, *Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom* [Dkt 10-4], at para. 14, (“[i]t 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.”).

In its *amicus curiae* brief, the *Amici* referenced the proclamation of provisional laws and its application to the United States District Court of Hawai‘i as an Article II Occupation Court. [Dkt 10-5], at 28, n. 41. The *Amici* stated, “[m]ost importantly, functioning as an Article II court here would not undermine all this Court’s past judgments; previous judgments and laws of the United States would remain in effect unless they are at odds with the laws of the occupied Hawaiian Kingdom.” *Id*.

In her Order Granting in Part and Denying in Part Defendant Nervell’s Motion to Dismiss [ECF 222], Judge Kobayashi was aware that the Court must transform itself into an Article II Court before it could consider Defendant Nervell’s Motion to Dismiss. 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…’ [Mem. in Opp. At 19-20.] Plaintiff bases this argument on the proposition that the Hawaiian Kingdom is a sovereign and independent state. See id., at 4.” The Court also stated, “[t]o support this argument, Plaintiff relies on an *amici curiae* brief filed in the instant case.” *Id*., n. 4.

The Court then applied the *Lorenzo* principle in error by citing “*U.S. Bank Tr., N.A. v. Fonoti*, Civil No. 18-00118 SOM-KJM, 2018 WL 3433295, at *10 (D. Hawai‘i June 29, 2018 (‘[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.'" (some alternations in Fonoti) (quoting *State v. French*, 77 Hawai'i 222, 228, 883 P.2d 644, 650 (Ct. App. 1994)))." *Id*. *State v. French* cites the *Lorenzo* case. The Court then concluded "Plaintiff's request for the Court to 'transform itself into an Article II Court' is therefore denied." *Id*. In its Order Denying Plaintiff's Motion for Judicial Notice [ECF 223], the Court also applied the *Lorenzo* principle in error by citing *Fonoti* and *French*. Without first being a properly constituted court, the District Court in Hawai'i is *ultra virus,* and its Orders are an unlawful usurpation of power.

Notwithstanding, the Ninth Circuit Court is a properly constituted Court with jurisdiction under treaty law to compel the District Court of Hawai'i to transform into an Article II Occupation Court, as well as transforming United States Courts for the Ninth Circuit that sit three times per year at its regular venue at 1132 Bishop Street, Courtroom Suite 250L, in the city of Honolulu, into an Article II Occupation Appellate Court. An Article II Occupation Appellate Court would then be capable of hearing appeals from Article II Occupation Courts in the Hawaiian Kingdom. *Evers v. Astrue*, 536 F.3d 651, 657 (7th Cir. 2008) (citation and internal quotation omitted) ("Federal courts are courts of limited jurisdiction and may only exercise jurisdiction where it is specifically authorized by federal statute."). Federal Courts are "empowered to hear only those cases that […] are within the judicial power of the United States, as defined in the Constitution […]." 13 C. Wright, A. Miller & E.

Cooper, *Federal Practice and Procedure*, §3522, 100 (1975). The Constitution vests federal courts with the authority to hear cases "arising under […] Treaties made […] under the[] Authority [of the United States]." U.S. Const. Art III, § 2. The 1907 Hague Regulations and the 1949 Fourth Geneva Convention are treaties made "under the[] Authority [of the United States]."

The Hawaiian Kingdom, as an independent State in continuity, is a *juridical fact*. In *Schexnider v. McDermott Int'l Inc.*, 688 F. Supp. 234, 238; 1988 U.S. Dist. LEXIS 6378, **10, the Court stated, *juridical facts* "hav[e] prescribed legal effects." According to the German tradition of the civil law, a *juridical act*, which is triggered by a *juridical fact*, "sets the law in motion and produces legal consequences." Nikolaos A. Davrados, "A Louisiana Theory of Juridical Acts," 80 (4) *Louisiana Law Review* 1119, 1129 (2020).

The *juridical fact* of the Hawaiian State produced a legal effect for the International Bureau of the Permanent Court of Arbitration (hereafter "PCA"), in *Larsen v. Hawaiian Kingdom*, to do a *juridical act* of accepting the dispute under the auspices of the PCA by virtue of Article 47, *Hague Convention on the Pacific Settlement of International Disputes, I* (hereafter "PCA Convention"), 36 Stat. 2199, 2224, which allows access to the PCA by non-Contracting States. Article 47 provides that "[t]he jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting

[States] or between Contracting [States] and non-Contracting [States], if the parties are agreed on recourse to this Tribunal." Attached hereto as Exhibit "7" is Annex 2 of the Permanent Court of Arbitration Annual Report for 2011 identifying the *Larsen v. Hawaiian Kingdom* arbitration on page 51 as established "Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention." Also attached hereto as Exhibit "8" is the Permanent Court of Arbitration Case repository identifying the Hawaiian Kingdom as a "State." According to David J. Bederman and Kurt R. Hilbert, "Lance Paul Larsen v. The Hawaiian Kingdom," 95 (4) *American Journal of International Law* 927, 928 (2001):

> At the center of the PCA proceeding was […] that the Hawaiian Kingdom continues to exist and that the Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States' "unlawful imposition [over his] of [its] municipal laws" through its politic subdivision, the State of Hawaii. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him.

Before the PCA could form the arbitral tribunal to resolve the Hawaiian dispute, it required institutional jurisdiction first, which would be satisfied if one of the parties to the dispute was a non-Contracting State in accordance with Article 47. The international dispute between Larsen and the Hawaiian Kingdom was not created by the *juridical fact*, but rather the *juridical fact* determined the legal

conditions for the PCA's acceptance of the dispute, which is the *juridical act* by which the dispute is established to gain access to the jurisdiction of the PCA. This *juridical act* "may be compared—*mutatis mutandis*—to a juridical act of a domestic judge recognizing a juridical fact (*e.g. filiation*) which is productive of certain legal effects arising from it according to law." Lenzerini, *Civil Law on Juridical Fact*, 3.

Plaintiff-Appellant HAWAIIAIN KINGDOM contends, in support of its Petition for Writ of Mandamus, that the transformation of the U.S. District Court and the Courts of the Ninth Circuit that sit in the territory of the Hawaiian Kingdom into Article II Occupation Courts has a direct nexus to the PCA's *juridical act* of acknowledging the Hawaiian Kingdom, a *juridical fact*, as a non-Contracting State to the PCA Convention. This institutional jurisdiction allowed the PCA to form the *ad hoc* arbitral tribunal to resolve the dispute between Larsen and the Hawaiian Kingdom, which subsequently had to address the subject matter jurisdiction of the arbitral tribunal and the implication of the indispensable third-party rule. See *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566 (2001). In similar fashion to the PCA, the Ninth Circuit would be allowed to establish Article II Occupation Courts pursuant to Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention, which would allow the Article II Occupation Court to determine if it has subject matter and/or personal jurisdiction when considering a motion to dismiss.

CONCLUSION

For the reasons stated above and based on the record in the case, a writ should issue directing District Court Judge Leslie Kobayashi to transform the District Court into an Article II Occupation Court pursuant to treaty law and the *Lorenzo* principle, or in the alternative grant the Motion to Dismiss for *Forum Non Conveniens*.

DATED: Honolulu, Hawai‘i, June 2, 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

CERTIFICATE OF COMPLIANCE

1. This brief complies with type-volume limitations of Fed. R. App. P. 27(d)(2)(A), 21(d)(1), and 31(a)(7)(B)(i) because this reply and brief contains 6,777 words, excluding the parts exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements for Fed. R. App. P. 32(a)(6) because this motion and brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2022 in Times New Roman 14-point typeface.

DATED: Honolulu, Hawai‘i, June 2, 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

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 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/ Dexter K. Ka'iama
Dexter K. Ka'iama
Attorney for Appellant Hawaiian Kingdom

Exhibit “1”

Positive
As of: February 12, 2020 8:36 AM Z

State v. Lorenzo

Intermediate Court of Appeals of Hawaii

October 20, 1994, Decided ; October 20, 1994, FILED

No. 16405

Reporter
77 Haw. 219 *; 883 P.2d 641 **; 1994 Haw. App. LEXIS 37 ***

STATE OF HAWAII, Plaintiff-Appellee, v. ANTHONY L. ***LORENZO***, Defendant-Appellant

Subsequent History: [*1]** Released for Publication November 4, 1994.

Prior History: APPEAL FROM THE FIRST CIRCUIT COURT. CR. NO. 91-2111.

Core Terms

sovereign, Native, entity, overthrow, Sovereignty

Case Summary

Procedural Posture

Defendant appealed a judgment of the First Circuit Court (Hawaii) convicting him after his plea of nolo contendere to failing to render assistance after being involved in an automobile accident, HRS § 291C-12 (1985), driving without a license, HRS § 286-102 (1985), and negligent injury, HRS § 707-705 (Supp. 1992). Defendant claimed that the trial court erred in denying his pretrial motion to dismiss the indictment.

Overview

Defendant argued that the courts of the State of Hawaii had no jurisdiction over him because the Kingdom of Hawai'i still existed as a sovereign nation, having been illegally overthrown in 1893 with the assistance of the United States. The court held that defendant did not meet his burden of proving his defense of lack of jurisdiction under HRS § 701-115(2). Although the United States recognized the illegality of the overthrow of the Kingdom, that recognition did not appear to be tantamount to a recognition that the Kingdom continued to exist. Further, Act 359, § 1, 1993 Haw. Sess. Laws 1009, 1010 indicated that the State of Hawaii did not recognize that the Kingdom continued to exist. The actions of the State and of various Native Hawaiian groups also showed that there was no clear consensus that the Kingdom continued to exist. Consequently, it was incumbent on defendant to present evidence supporting his claim, and he failed to present a factual or legal basis for concluding that the Kingdom existed as a State in accordance with recognized attributes of a State's sovereign nature.

Outcome
The court affirmed defendant's conviction.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > De Novo Review

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > General Overview

Civil Procedure > Preliminary Considerations > Jurisdiction

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions

HN1 **Standards of Review, De Novo Review**

The court's jurisdiction to consider matters brought before it is a question of law, which is subject to de novo review on appeal applying the "right/wrong" standard.

Governments > State & Territorial Governments

HN2 **Governments, State & Territorial Governments**

A State is defined as an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities.

Governments > State & Territorial Governments

HN3 **Governments, State & Territorial Governments**

The following are essential attributes of sovereign statehood: the power to declare and wage war; to conclude peace; to maintain diplomatic ties with other sovereigns; to acquire territory by discovery and occupation; and to make international agreements and treaties.

Counsel: Kali Watson, on the brief for defendant-appellant.

James M. Anderson, Deputy Prosecuting Attorney, City and County of Honolulu, on the brief for plaintiff-appellee.

Judges: BURNS, C.J., HEEN, AND WATANABE, JJ.

Opinion by: HEEN

Opinion

[*220] [642]** OPINION OF THE COURT BY HEEN, J.

Upon his plea of nolo contendere, Defendant-Appellant Anthony Lorenzo (Lorenzo) was adjusted guilty of the offenses of failing to render assistance after being involved in an automobile accident, *Hawai'i Revised Statutes (HRS) § 291C-12* (1985), driving without a license, *HRS § 286-102* (1985), and negligent injury, *HRS § 707-705* (Supp. 1992).

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 Kingdom of Hawai'i (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. [1] Lorenzo makes the **[***2]** same argument on appeal. For the reasons set forth below, we conclude that the lower court correctly denied the Motion.

We start with the proposition that ***HN1*** the court's jurisdiction to consider matters brought before it is a question of law, *United States v. Lorenzo, 995 F.2d 1448, 1456 (9th Cir. 1993)*, cert. denied, __ U.S. __, __ S. Ct. __, __ L. Ed. 2d __, which is subject to de novo review on appeal applying the "right/wrong" standard. *State v. Furutani, 76 Haw. 172, 180, 873 P.2d 51, 59 (1994)* (citing *In re Estate of Holt, 75 Haw. 224, 232, 857 P.2d*

[1] Incongruously, although Defendant challenged the lower court's jurisdiction, he in fact requested the court to exercise jurisdiction by transferring the case to the "Court of the Supreme Court of Judicature under the Hawaii Nationals."

1355, 1359, *reconsideration denied*, *75 Haw. __, 863 P.2d 989 (1993))* **[***3]** (citation omitted).

The lower court in this case orally ruled:

> Although the Court respects Defendant's freedom of thought and expression to believe that jurisdiction over the Defendant for the criminal offenses in the instant case should be with a sovereign, Native Hawaiian entity, like the Kingdom of Hawaii [Hawai'i], such an entity does not preempt nor preclude jurisdiction of this court over the above-entitled matter.

The essence of the lower court's decision is that even if, as Lorenzo contends, the 1893 overthrow of the Kingdom was illegal, that would not affect the court's jurisdiction in this case. Although the court's rationale is **[*221]** **[**643]** open to question in light of international law, [2] the record indicates that the decision was correct because Lorenzo did not meet his burden of proving his defense of lack of jurisdiction. *HRS § 701-115(2)*. Therefore, we must affirm the judgment. State v. Schroeder, __ Haw. __ (No. 15356, August 30, 1994) (citing *Brooks v. Minn, 73 Haw. 566, 576, 836 P.2d 1081, 1087 (1992))*.

[*4]** The United States Government recently recognized the illegality of the overthrow of the Kingdom and the role of the United States in that event. P.L. 103-150, 107 Stat. 1510 (1993). However, that recognition does not appear to be tantamount to a recognition that the Kingdom continues to exist.

The Hawai'i State Government has also recognized that as a result of the overthrow and the events that followed thereafter,

> the indigenous people of Hawaii [Hawai'i] were denied the mechanism for expression of their inherent sovereignty through self-government and self-determination, their lands, and their ocean resources.

Act 359, § 1, 1993 Haw. Sess. Laws 1009, 1010.

The stated purpose of Act 359 is to "facilitate the efforts of native Hawaiians to be governed by an indigenous sovereign nation of their own choosing." Thus, while the legislature has tacitly recognized the illegal overthrow, Act 359 indicates that the State of Hawai'i does not recognize that the Kingdom exists at the present time.

Act 359 recognized the Hawaiian sovereignty movement and established the Hawaiian Sovereignty Advisory Commission to assist the legislature in obtaining "counsel from the native Hawaiian **[***5]** people on the process" of determining their willingness to convene in a convention and draft a document to provide for their self-governance through a sovereign entity. [3] Only theoretically would such an entity be an extension of the original Kingdom; rather, it would be a new sovereign entity established by a present day Native Hawaiian citizenry.

We also take judicial notice that within the Native Hawaiian community there is more than one group that has disavowed Act 359's process and has declared itself to be either independent of the State and the United States or has established its own constitution establishing a Native Hawaiian "Nation within a Nation." At least one of those groups bases its declaration **[***6]** of independence on P.L. 103-150. Some of those groups have actively sought recognition internationally and from the United States government as a reorganized sovereign Hawaiian nation. However, none has been successful so far.

Although it may be argued, as do many Native Hawaiians, that the actions and the declarations of the United States and the State are not determinative of the question of the continued existence of the Kingdom, those actions, and the actions of the various Native Hawaiian groups referred to above, illustrate that there is no clear consensus that the Kingdom does continue to exist. Consequently, 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

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[2]

> 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 in violation of the United Nations Charter.

Restatement (Third) of the Foreign Relations Law of the United States § 202(2).

The illegal overthrow leaves open the question whether the present governance system should be recognized, even though the illegal overthrow predated the United Nations Charter.

[3] In 1994, the legislature changed the name of the Hawaiian Sovereignty Advisory Commission to the Hawaiian Sovereignty Election Council and gave the Council general supervision over elections to a convention of Native Hawaiians to prepare a system of self-governance for themselves. Act 200, 1994 Haw. Sess. Laws.

in accordance with recognized attributes of a state's sovereign nature. [4] Consequently, his **[*222]** **[**644]** argument that he is subject solely to the Kingdom's jurisdiction is without merit, and the lower court correctly exercised jurisdiction over him. Id.

[*7]** The judgment is affirmed.

End of Document

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[4] ***HN2***[↑] A state is defined as

> "an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities."

Klinghoffer v. S.N.C. Achille Lauro, 937 F.2d 44, 47 (2d Cir. 1991) (quoting ***National Petro-chemical Co. v. M/T Stolt Sheaf, 860 F.2d 551, 553 (2d Cir. 1988)*** (quoting *Restatement (Third) of the Foreign Relations Law of the United States § 201* (1987)), cert. denied, ***489 U.S. 1081, 109 S. Ct. 1535, 103 L. Ed. 2d 840 (1989))***.

The United States Supreme Court has listed ***HN3***[↑] the following as essential attributes of sovereign statehood: the power to declare and wage war; to conclude peace; to maintain diplomatic ties with other sovereigns; to acquire territory by discovery and occupation; and to make international agreements and treaties. See *United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 318-319, 57 S. Ct. 216, 220-21, 81 L. Ed. 255 (1936)*.

Exhibit “2”

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

HAWAIIAN KINGDOM, Plaintiff, vs. JOSEPH ROBINETTE BIDEN, JR., IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., Defendants.	CIV. NO. 21-00243 LEK-RT

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT NERVELL'S MOTION TO DISMISS

Before the Court is Defendant Anders G.O. Nervell's ("Nervell") Motion to Dismiss Amended Complaint for Declaratory and Injunctive Relief as to Anders G.O. Nervell ("Motion"), filed on September 21, 2021.[1] [Dkt. no. 74.] Plaintiff Hawaiian Kingdom ("Plaintiff") filed its memorandum in opposition on October 19, 2021, and Nervell filed his reply on November 3, 2021. [Dkt. nos. 129, 146.] The Court finds this matter suitable for disposition without a hearing pursuant to Rule LR7.1(c) of the Local Rules of Practice for the United States District Court for the District of Hawaii ("Local Rules"). The

[1] Nervell's counsel specially appeared for Nervell because personal service was not properly completed on Nervell. See Motion at 1 n.1. Nervell does not waive a challenge regarding the sufficiency of service. See id.

Motion is hereby granted in part and denied in part for the reasons set forth below.

BACKGROUND

The operative complaint in this action is Plaintiff's Amended Complaint for Declaratory and Injunctive Relief ("Amended Complaint"). [Dkt. no. 55.] Plaintiff alleges Nervell is "Sweden's Honorary Consul to Hawai`i."[2] [Amended Complaint at ¶ 45.] Plaintiff further alleges Nervell "violated international humanitarian laws," and "violated the sovereign interests of" Plaintiff because Nervell "receive[d] exequaturs" from the United States rather than from Plaintiff.[3] See id. at ¶¶ 171, 174. Plaintiff seeks to enjoin Nervell from "serving as [a] foreign consulate[] . . . until [he has] presented [his] credentials to [Plaintiff] and received exequaturs." [Id. at ¶ 175.d.] Nervell seeks dismissal of the claim against him with prejudice on the ground that the Court does not have jurisdiction over him as an Honorary Consul of Sweden.

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[2] Plaintiff's Amended Complaint, which includes two exhibits, spans over 100 pages. As such, the Court only addresses the factual allegations relevant to Nervell.

[3] Exequatur occurs when "[t]he head of a consular post is admitted to the exercise of his functions by an authorization from the receiving State." Vienna Convention on Consular Relations ("Vienna Convention"), art. 12, Apr. 24, 1963, 21 U.S.T. 77, T.I.A.S. No. 6820 (entered into force by the United States of America Dec. 24, 1969).

DISCUSSION

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 . . . ." [Mem. in Opp. at 19-20.[4]] Plaintiff bases this argument on the proposition that the Hawaiian Kingdom is a sovereign and independent state. See id. at 4. This district has uniformly rejected such a proposition. See, e.g., U.S. Bank Tr., N.A. v. Fonoti, Civil No. 18-00118 SOM-KJM, 2018 WL 3433295, at *10 (D. Hawai`i June 29, 2018) ("'[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.'" (some alterations in Fonoti) (quoting State v. French, 77 Hawai`i 222, 228, 883 P.2d 644, 650 (Ct. App. 1994))), *report and recommendation adopted*, 2018 WL 3431923 (July 16, 2018). Plaintiff's request for the Court to "transform itself into an Article II Court" is therefore denied.

Plaintiff asserts its claim against Nervell in his official capacity as Honorary Consul of Sweden to Hawai`i. See Amended Complaint at ¶ 45; see also id. at pg. 3 (case caption).

[4] To support this argument, Plaintiff relies on an *amici curiae* brief filed in the instant case. See Brief of *Amici Curiae* International Association of Democratic Lawyers, National Lawyers Guild, and Water Protector Legal Collective in Support of Plaintiff's Amended Complaint, filed 10/6/21 (dkt. no. 96) at 25-26.

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. [Motion at 2—3.] The Court agrees.

"The district courts shall have original jurisdiction, exclusive of the courts of the States, of all civil actions and proceedings against . . . consuls or vice consuls of foreign states . . . ." 28 U.S.C. § 1351(1). However, the Vienna Convention provides that consular officials enjoy some immunities from § 1351. See Joseph v. Office of Consulate Gen. of Nigeria, 830 F.2d 1018, 1027 (9th Cir. 1987) ("[T]he district court does not have jurisdiction over [a consular official] if he is protected by consular immunity."). For instance, "[u]nder article 43 of the Vienna Convention, consular officials are subject to the jurisdiction of the receiving state except 'in respect of acts performed in the exercise of consular functions.'" Id. (quoting 21 U.S.T. at 104). Honorary consular officials, regardless of whether they are citizens of the receiving state, are also immune from jurisdiction of the receiving state for acts performed in the exercise of consular functions. See Foxgord v. Hischemoeller, 820 F.2d 1030, 1032-33 (9th Cir. 1987) (explaining some of the different immunities for career consuls, honorary consuls who are not citizens or permanent residents of the receiving state, and honorary consuls

who are citizens or permanent residents of the receiving state); see also Vienna Convention, arts. 59 & 71(1), 21 U.S.T at 115, 119.

Here, neither Plaintiff nor Nervell address whether Nervell is a citizen or permanent resident of Hawai`i. However, the result is the same regardless of Nervell's citizenship or residency status because Plaintiff alleges its claim against Nervell for acts performed in the exercise of his consular functions. Specifically, Plaintiff alleges Nervell violated international law because he received exequatur from the United States rather than from the "Hawaiian Kingdom government." See Amended Complaint at ¶¶ 171, 174. As an honorary consul, Nervell "enjoy[s] . . . 'immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of [his] [consular] functions . . . .'" See Foxgord, 820 F.2d at 1033 (quoting Vienna Convention, art. 71(1)). The Ninth Circuit has stated:

> Article 5 of the Vienna Convention defines the term "consular function." Articles 5(a)-5(l) list twelve specific consular functions. Article 5(m), a "catch-all" provision, defines "consular function" to include "any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State." 21 U.S.T. at 82-85.

Joseph, 830 F.2d at 1027. Because Plaintiff takes issue with Nervell receiving exequatur from the United States, its claim

against Nervell concerns official acts performed in the exercise of Nervell's consular functions.

Accordingly, the Court lacks subject matter jurisdiction over Plaintiff's claim against Nervell because Nervell is immune from suit under the Vienna Convention. Plaintiff's claim against Nervell is therefore dismissed. The dismissal is without prejudice. See Missouri ex rel. Koster v. Harris, 847 F.3d 646, 656 (9th Cir. 2017) ("In general, dismissal for lack of subject matter jurisdiction is without prejudice." (citations omitted)).

CONCLUSION

On the basis of the foregoing, Nervell's Motion to Dismiss Amended Complaint for Declaratory and Injunctive Relief as to Anders G.O. Nervell, filed September 21, 2021, is HEREBY GRANTED IN PART AND DENIED IN PART. The Motion is GRANTED insofar as Plaintiff's claim against Nervell is DISMISSED. The Motion is DENIED, however, to the extent that the dismissal is WITHOUT PREJUDICE.

Plaintiff is granted leave to amend its claim against Nervell. If Plaintiff wishes to make other amendments to its claims, it must file a motion seeking leave to amend. If Plaintiff chooses to amend its claim against Nervell, it must file its amended complaint by **May 30, 2022.** If Plaintiff does not file a timely amended complaint, Plaintiff's claim against

Nervell will be dismissed with prejudice, and the case will proceed as to Plaintiff's claims against the remaining defendants.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, March 30, 2022.

/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

Exhibit “3”

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

HAWAIIAN KINGDOM, Plaintiff, vs. JOSEPH ROBINETTE BIDEN, JR., IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., Defendants.	CIV. NO. 21-00243 LEK-RT

ORDER DENYING PLAINTIFF'S MOTION FOR JUDICIAL NOTICE

Before the Court is Plaintiff Hawaiian Kingdom's ("Plaintiff") motion for judicial notice ("Motion"), filed on December 6, 2021. [Plaintiff's Request for Judicial Notice Pursuant to FRCP 44.1 Re: Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration, filed 12/6/21 (dkt. no. 174).] Defendants Joseph Robinette Biden, Jr., Kamala Harris, John Aquilino, Charles P. Rettig, Charles E. Schumer, Nancy Pelosi,[1] and the United States of America (collectively "Federal Defendants") filed their memorandum in opposition on January 14, 2022, and Plaintiff filed its reply on January 28, 2022. [Dkt.

[1] Defendants Joseph Robinette Biden, Jr., Kamala Harris, John Aquilino, Charles P. Rettig, Charles E. Schumer, and Nancy Pelosi, are each sued in his or her official capacity.

nos. 189, 203.] The Court finds this matter suitable for disposition without a hearing pursuant to Rule LR7.1(c) of the Local Rules of Practice for the United States District Court for the District of Hawaii ("Local Rules"). The Motion is hereby denied for the reasons set forth below.

DISCUSSION

"Plaintiff . . . requests that, pursuant to [Federal Rule of Civil Procedure] 44.1, the Court take judicial notice of the civil law regarding the **juridical act** of the Permanent Court of Arbitration ('PCA') recognizing the **juridical fact** of the Statehood of the Hawaiian Kingdom and the Council of Regency as its government." [Motion at 2 (emphases in original).] Plaintiff also asks the Court to take judicial notice of the "expert opinion of Professor Federico Lenzerini, a professor of international law at the University of Siena, Italy." [Id.] Plaintiff seeks judicial notice of the proffered material to support its contention that the Court should transform itself into an Article II court because the Hawaiian Kingdom is a sovereign and independent state. See id.; see also Amended Complaint for Declaratory and Injunctive Relief, filed 8/11/21 (dkt. no. 55), at ¶¶ 3-4, 70-75.

Federal Rule of Civil Procedure 44.1 states:

> A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining

> foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination must be treated as a ruling on a question of law.

It is the Court's "prerogative under Federal Rule of Civil Procedure 44.1 to 'consider any relevant material or source, including testimony,' . . . in determining a question of foreign law." Fahmy v. Jay-Z, 908 F.3d 383, 392 n.13 (9th Cir. 2018) (citation omitted). Although "it is neither novel nor remarkable for a court to accept the uncontradicted testimony of an expert to establish the relevant foreign law[,]" Universe Sales Co., Ltd. v. Silver Castle, Ltd., 182 F.3d 1036, 1039 (9th Cir. 1999), foreign law is not relevant to the instant action. "[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." Moniz v. Hawai`i, No. CIV. 13-00086 DKW, 2013 WL 2897788, at *2 (D. Hawai`i June 13, 2013) (citations omitted). Moreover, "'[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.'" U.S. Bank Tr., N.A. v. Fonoti, Civil No. 18-00118 SOM-KJM, 2018 WL 3433295, at *10 (D. Hawai`i June 29, 2018) (quoting Hawaii v. French, 77 Haw. 222, 228, 883 P.2d 644, 650 (Ct. App. 1994))),

report and recommendation adopted, 2018 WL 3431923 (July 16, 2018).

Because a question of foreign law is not before the Court, it need not consider whether it is appropriate to take judicial notice of Plaintiff's proffered material. Plaintiff's Motion is therefore denied.

CONCLUSION

On the basis of the foregoing, Plaintiff's Request for Judicial Notice Pursuant to FRCP 44.11 Re: Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration, filed December 6, 2021, is HEREBY DENIED.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, March 31, 2022.

/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

Exhibit “4”

CIVIL LAW ON JURIDICAL FACT OF THE HAWAIIAN STATE AND THE CONSEQUENTIAL JURIDICAL ACT BY THE PERMANENT COURT OF ARBITRATION

FEDERICO LENZERINI*

5 December 2021

Juridical Facts

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 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.[1]

Both *rights*, *powers* or *obligations* – held by/binding a person or another subject of law (in international law, a State, an international organization, a people, or any other entity to which international law attributes legal personality) – may arise from a juridical fact.

Sometimes a juridical fact determines the production of legal effects irrespective of the action of a person or another subject of law. In other terms, in some cases legal effects are automatically produced by a(n *inactive*) juridical fact – only by virtue of the mere existence of the latter – without any need of an action by a legal subject. "Inactive juridical facts are events which occur more or less spontaneously, but still have legal effects because a certain reaction is regarded to be necessary to deal with the newly arisen circumstances".[2] Inactive juridical facts may be based on an occasional situation, a quality of a person or a thing, or the course of time.[3]

Juridical Acts

In other cases, however, the legal effects arising from a juridical fact only exist *potentially*, and, in order to concretely come into existence they need to be activated through a behaviour by a subject of law, which may consist of either an action or a passive behaviour. The legal effects may arise from either an *operational act* – i.e. a behaviour to which the law attributes legally-relevant effects for the sole ground of its existence, "although the acting [subject] had no intention to create this legal

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[1] See Lech Morawski, "Law, Fact and Legal Language", (1999) 18 *Law and Philosophy* 461, at 463.

[2] See "Legal System of Civil Law in the Netherlands", available at <http://www.dutchcivillaw.com/content/legalsystem022aa.htm> (accessed on 4 December 2021).

[3] Ibidem.

effect"[4] – or an act that a subject of law performs intentionally, "because he[/she/it] knows that the law will respond to it by acknowledging the conception of a particular legal effect. The act is explicitly [and voluntarily] chosen to let this legal effect arise".[5] In order to better comprehend this line of reasoning, one may consider the example of adverse possession,[6] which is determined by the juridical fact that a given span of time has passed during which the thing has continuously been in the possession without being claimed by its owner. However, in order for the possessor to effectively acquire the right to property, it is usually necessary to activate a legal action before the competent authority aimed at obtaining its legal recognition. In this and other similar cases a subject of law intentionally performs an act "to set the law in motion" with the purpose of producing a desired juridical effect. The legal subject concerned knows that, through performing such an act, the wanted juridical effect will be produced as a consequence of the existence of a juridical fact. Acts that are intentionally performed by a subject of law with the purpose of producing a desired legal effect are defined as *juridical acts* (or *legal acts*). It follows that an act consequential to a juridical fact (i.e. having the purpose of producing a given juridical effect in consequence of the existence of a juridical fact) is called *juridical* (or *legal*) *act*. The entitlement to perform a *juridical act* is the effect of a *power* attributed by the *juridical fact* to the legal subject concerned. The most evident difference between *juridical facts* and *juridical acts* is that, while the former "produce legal consequences regardless of a [person]'s will and capacity", the latter "are licit volitional acts – in the form of a manifestation of will – that are intended to produce legal consequences".[7]

Effects of Juridical Acts on Third Parties

One legal subject may only perform a juridical act unilaterally when it falls within her/his/its own legal sphere, but an unilateral juridical act may produce effects for other legal subjects as well. For instance, in private law unilateral juridical acts exist which produce juridical effects on third parties – for instance a will or a promise to donate a sum of money. Usually, unilateral juridical acts start to produce their effects from the moment when they are known by the beneficiary, and from that moment their withdrawal is precluded, unless otherwise provided for by applicable law (depending on the specific act concerned).

Similarly, bilateral or plurilateral juridical acts influencing the life of third parties are also provided by law – e.g. a contract in favour of third parties or a trust, typical of the common law tradition. Then, of course, the beneficiary of such acts may decide to refuse the benefits (if any) arising from them; however, if such benefits are not refused, said acts will definitely produce their effects, and may only be withdrawn within the limits established by law. Juridical acts also include the laws and regulations adopted by national parliaments, administrative acts, and, more in general, all acts determining – i.e. creating, modifying or abrogating – legal effects. *Acts of the judiciary* (judgments, orders, decrees, etc.) are also included in the concept of juridical acts. For instance, a judgment recognizing natural filiation produces the effects of filiation – with *retroactive effects* – "transform[ing] the [juridical] fact of procreation (in itself insufficient to create a legal relationship)

[4] Ibidem.
[5] Ibidem.
[6] Adverse possession refers to a legal principle – in force in many countries, especially of civil law – according to which a subject of law is granted property title over another subject's property by keeping continuous possession of it for a given (legally defined) period of time, on the condition that the title over the property is not claimed by the owner throughout the whole duration of that period of time.
[7] See Nikolaos A. Davrados, "A Louisiana Theory of Juridical Acts" (2020) 80 *Louisiana Law Review* 1119, at 1273.

into a state of filiation (recognized child) that is relevant to the law".[8] In this case, a juridical act of the judge actually leads to the recognition of a legal state – productive of a number of juridical effects, including *ex tunc* – arising from the juridical fact of the natural filiation. This is a perfect example of a juridical fact (exactly the natural filiation) whose legal effects exist *potentially*, and are activated by the juridical act represented by the judge's decision.

The Juridical Act of the Permanent Court of Arbitration (PCA) Recognizing the Juridical Fact of the Statehood of the Hawaiian Kingdom and the Council of Regency as its government

According to the *PCA Arbitration Rules*,[9] disputes included within the competence of the PCA include the following instances:

- disputes between two or more States;
- disputes between two parties of which only one is a State (i.e., disputes between a State and a private entity);
- disputes between a State and an international organization;
- disputes between two or more international organizations;
- disputes between an international organization and a private entity.

It is evident that, in order for a dispute to fall within the competence of the PCA, it is *always* necessary that either a State or an international organization are involved in the controversy. The case of *Larsen v. Hawaiian Kingdom*[10] was qualified by the PCA as a dispute between a State (The Hawaiian Kingdom) and a Private entity (Lance Paul Larsen).[11] In particular, the Hawaiian Kingdom was qualified as a non-Contracting Power under Article 47 of the 1907 Convention for the Pacific Settlement of International Disputes.[12] In addition, since the PCA allowed the Council of Regency to represent the Hawaiian Kingdom in the arbitration, it also implicitly recognized the former as the government of the latter.[13]

According to a civil law perspective, the juridical act of the International Bureau of the PCA instituting the arbitration in the case of *Larsen v. Hawaiian Kingdom* may be compared – *mutatis mutandis* – to a juridical act of a domestic judge recognizing a juridical fact (e.g. *filiation*) which is productive of certain legal effects arising from it according to law. Said legal effects may include, depending on applicable law, the power to stand before a court with the purpose of invoking certain rights. In the context of the *Larsen* arbitration, the juridical fact recognized by the PCA in favour of the Hawaiian Kingdom was its quality of *State* under international law. Among the legal effects produced by such a juridical fact, the entitlement of the Hawaiian Kingdom to be part of an international arbitration under the auspices of the PCA was included, since the existence of said juridical fact actually represented an indispensable condition for the Hawaiian Kingdom to be admitted in the *Larsen* arbitration, *vis-à-vis* a private entity (Lance Paul Larsen). Consequently, the

[8] See Armando Cecatiello, "Recognition of the natural child", available at <https://www.cecatiello.it/en/riconoscimento-del-figlio-naturale-2/> (accessed on 4 December 2021).

[9] The *PCA Arbitration Rules 2012* (available at <https://docs.pca-cpa.org/2015/11/PCA-Arbitration-Rules-2012.pdf>, accessed on 5 December 2021) constitute a consolidation of the following set of PCA procedural rules: the *Optional Rules for Arbitrating Disputes between Two States (1992)*; the *Optional Rules for Arbitrating Disputes between Two Parties of Which Only One is a State* (1993); the *Optional Rules for Arbitration Between International Organizations and States* (1996); and *the Optional Rules for Arbitration Between International Organizations and Private Parties (1996)*.

[10] Case number 1999-01.

[11] See <https://pca-cpa.org/en/cases/35/> (accessed on 5 December 2021).

[12] Available at <https://docs.pca-cpa.org/2016/01/1907-Convention-for-the-Pacific-Settlement-of-International-Disputes.pdf> (accessed on 5 December 2021).

[13] See Declaration of Professor Federico Lenzerini [ECF 55-2].

International Bureau of the PCA carried out the juridical act consisting in establishing the arbitral tribunal as an effect of the recognition of the juridical fact in point. Likewise, e.g., the recognition of the juridical fact of filiation by a domestic judge, also the recognition of the Hawaiian Kingdom as a State had in principle retroactive effects, in the sense that the Hawaiian Kingdom did *not* acquire the condition of State per effect of the PCA's juridical act. Rather, the Hawaiian Kingdom's Statehood was a juridical fact that the PCA recognized as *pre-existing* to its juridical act.

The Effects of the Juridical Act of the PCA Recognizing the Juridical Fact of the Continued Existence of the Hawaiian Kingdom as a State and the Council of Regency as its government

At the time of the establishment of the *Larsen* arbitral tribunal by the PCA, the latter had 88 contracting parties.[14] One may safely assume that the PCA's juridical act consisting in the recognition of the juridical fact of the Hawaiian Kingdom as a State, through the institution of the *Larsen* arbitration, reflected a view shared by all such parties, on account of the fact that the decision of the International Bureau of the PCA was not followed by any complaints by any of them. In particular, it is especially meaningful that there was "no evidence that the United States, being a Contracting State [indirectly concerned by the *Larsen* arbitration], protested the International Bureau's recognition of the Hawaiian Kingdom as a State in accordance with Article 47".[15] On the contrary, the United States appeared to provide its acquiescence to the establishment of the arbitration, as it entered into an agreement with the Council of Regency of the Hawaiian Kingdom to access all records and pleadings of the dispute.

Under international law, the juridical act of the PCA recognizing the juridical fact of the Hawaiian Kingdom as a State may reasonably be considered as an important manifestation of – contextually – State practice and *opinio juris*, in support of the assumption according to which the Hawaiian Kingdom is actually – and has never ceased to be – a sovereign and independent State pursuant to customary international law. As noted a few lines above, it may be convincingly held that the PCA contracting parties actually agreed with the recognition of the juridical fact of the Hawaiian Kingdom as a State carried out by the International Bureau. In fact, in international law, *acquiescence* "concerns a consent tacitly conveyed by a State, unilaterally, through silence or inaction, in circumstances such that a response expressing disagreement or objection in relation to the conduct of another State [or an international institution] would be called for".[16] The case in discussion is evidently a situation in the context of which, in the event that any of the PCA contracting parties would have disagreed with the recognition of the continued existence of the Hawaiian Kingdom as a State by the International Bureau through its juridical act, an explicit reaction would have been necessary. Since they "did not do so […] thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset*".[17]

[14] See <https://pca-cpa.org/en/about/introduction/contracting-parties/> (accessed on 5 December 2021).
[15] See David Keanu Sai, "The Royal Commission of Inquiry", in David Keanu Sai (ed.), The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom (Honolulu 2020) 12, at 25.
[16] See Nuno Sérgio Marques Antunes, "Acquiescence", in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (2006), at para. 2.
[17] See International Court of Justice, *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment of 15 June 1962, *I.C.J. Reports* 1962, p. 6, at 23.

Exhibit “5”

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

WELLS FARGO BANK, N.A.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL NO. 11-1-106
	)	
ELAINE E. KAWASAKI, et al.,	)	
	)	
Defendant.	)	
	)	

TRANSCRIPT OF PROCEEDINGS

before the HONORABLE, GLENN S. HARA, Judge presiding, Second Division, on Friday, June 15, 2012.

HEARING ON MOTION TO DISMISS COMPLAINT

APPEARANCES:

For the plaintiff: SOFIA M. HIROSANE, ESQ.
RCO HAWAII LLLC
900 Fort Street Mall
Suite 800
Honolulu, Hawaii 96813

For Defendant ELAINE E. KAWASAKI (Special Appearance):
DEXTER K. KAIAMA, ESQ.
AGARD & KAIAMA
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Honolulu, Hawaii 96813

Reported by: JENNIFER WHETSTONE, CSR 421, RMR
Official Court Reporter
Third Circuit Court, State of Hawaii

Friday, June 15, 2012 9:13 A.M.

--oOo--

THE CLERK: Civil number 11-1-106, Wells Fargo Bank versus Elaine Kawasaki. Defendant Elaine E. Kawasaki's motion to dismiss complaint pursuant to HRCP 12(b)(1).

MS. HIROSANE: Good morning, Your Honor; Sofia Hirosane on behalf of the plaintiff.

MR. KAIAMA: Good morning, Your Honor; Dexter Kaiama making a special appearance on behalf of Ms. Kawasaki. Ms. Kawasaki is present in the courtroom.

THE COURT: Okay, what's the scope of your special appearance?

MR. KAIAMA: The scope of my special appearance, Your Honor, is to make argument and presentation with respect to Ms. Kawasaki's 12(b)(1) motion to dismiss challenging the subject matter jurisdiction of this court, Your Honor.

THE COURT: And how far does that extend?

MR. KAIAMA: If I understand your question correctly, Your Honor, I'm making argument today, um, and after I make argument I -- my appearance would -- that -- that terminates my appearance at the end of argument. So if the court were, for example, to deny the motion to dismiss an order from Ms. Hirosane to go directly to Ms. Kawasaki for her review, or if Ms. Hirosane were to submit it

pursuant to rule 23, correspondence would go directly to Ms. Kawasaki.

THE COURT: Okay, so it's just for today, and then your -- your engagement ends.

MR. KAIAMA: That is correct, Your Honor.

THE COURT: And Mister -- I just want, Mr. Kaiama, I just wanna make that clear, because it may, as you indicated, I mean there are other things that's going to fall out of this hearing that may require, you know, counsel to act on it, if you were still counsel. And I wanna make sure that it's clear, after today, after you leave the courtroom today, you're not counsel of record.

MR. KAIAMA: That is correct, Your Honor. Now, if Ms. Kawasaki wishes to engage me for additional services then she would engage me at that time. But my term, my -- my appearance and my representation as counsel ends as I walk out of the courtroom.

THE COURT: Okay. Well, that kind of representation makes it very difficult for the court sometimes to --

MR. KAIAMA: I can only speak to my representation today, I cannot speculate as to what might happen tomorrow or the next day as to whether she wishes to engage my services or not, Your Honor.

THE COURT: Yeah. But that kind of unbundling,

if you will, makes it very difficult for the court to determine, sometimes, whether an attorney is still responsible for receiving material for noticing purposes. So I'm gonna make it clear that, after today, unless you put in a appearance of counsel, that your -- your status as counsel in this case terminates.

MR. KAIAMA: Thank you, Your Honor. That is fine.

THE COURT: All right.

MR. KAIAMA: Okay.

THE COURT: Okay.

MR. KAIAMA: Shall I begin, Your Honor?

THE COURT: Hold on. Let me -- so the court does have Ms. Kawasaki's motion to dismiss pursuant to civil rules 12(b)(1). I have plaintiff's memorandum in opposition, and Ms. Kawasaki's reply that was filed on June 12th. Do you have the reply?

MS. HIROSANE: Yes, I do, Your Honor.

THE COURT: So was there anything else that was submitted in the meantime?

MR. KAIAMA: My only understanding, I think the court is aware, but with respect to this motion, no, she did file an ex parte motion for a stay of the enforcement of the writ pending the outcome of the motion.

THE COURT: Okay. I think I granted the

ex parte motion, at least until today's hearing.

MR. KAIAMA: That is my understanding, Your Honor.

THE COURT: Okay.

MS. HIROSANE: That's my understanding. And, Your Honor, just for the record, we were only served with a copy of, uh, Ms. Kawasaki's ex parte motion yesterday.

THE COURT: Okay. I think the court instructed the staff to call your firm to let 'em know that I did sign the ex parte motion, 'cause it didn't look like you had been provided a copy.

MS. HIROSANE: That's correct, Your Honor. We -- we did appreciate that.

THE COURT: Okay. So here's the court's inclination, Mr. Kaiama. And in answer to the plaintiff's comment that maybe the motion may be delayed, it looks like the motion is one that challenges the subject matter jurisdiction. At least on its face. But -- and any time there is a jurisdictional challenge, it can be made at any time. That's my understanding. Because if the court has no jurisdiction then whatever the court does is void. Um, so I'm treating this as a motion to dismiss for the court's lack of subject matter jurisdiction for the reasons stated. And that is that the argument is that the Kingdom of Hawaii still exists, and therefore, in essence, this court has no

jurisdiction, it's the courts of the Kingdom of Hawaii. That's how I'm taking the motion. Mr. Kaiama?

MR. KAIAMA: And that is essentially Ms. Kawasaki's motion and our argument.

THE COURT: Okay. So the court would -- is inclined to deny the motion. I think the Hawaii case law is pretty clear that, um, the jury is still out as to whether or not the Kingdom of Hawaii still exists. That's number one.

Number two, even if it existed, there has been no definitive ruling that says that the existence of the kingdom itself would divest the court's of this state of jurisdiction.

And it is also clear -- I don't think that Ms. Kawasaki claims to be a citizen of the Kingdom of Hawaii? I didn't see that alleged in her, um, memorandum. And there have been at least three or four cases, either at the supreme court or the intermediate court of appeals, that have held that even if you claim to be a king -- subject of the Kingdom of Hawaii, if you violate laws within the territorial jurisdiction of the State of Hawaii, the criminal laws would still apply to you.

I would assume that that same principle would apply even if you don't claim to be a subject of the Kingdom of Hawaii. And if the kingdom did exist, um, that the civil

laws, as well, within the jurisdiction of the state court would also be still applicable.

And I think the most recent ICA summary disposition order touching on this was Burgo, B-U-R-G-O, versus State of Hawaii. The court of appeals number was CAAP-10-33. And it was decided May 3, 2012. And basically it cited the cases that I think are fairly familiar by now, State versus Fergerstrom, 106 Hawaii 43; State versus Lorenzo, 77 Hawaii, 219; State versus Jim, 80 Hawaii, 168, all for the proposition that being a -- or claiming to be a citizen of the Kingdom of Hawaii would not remove you from being subject to the laws of the State of Hawaii, including the statutes providing for the jurisdiction of the circuit courts.

Okay. So, Mr. Kaiama, given that inclination, I'll let you argue further.

MR. KAIAMA: Thank you, Your Honor. What continues to be controlling with the courts, Your Honor, is State of Hawaii versus Lorenzo. Even the most recent case that Your Honor cited stands, uh, follows the State of Hawaii versus Lorenzo.

Now, in State of Hawaii versus Lorenzo, the ruling of the court was, essentially, that the defendant in that case, Lorenzo, lost its claim that the State of Hawaii did not have jurisdiction, subject matter jurisdiction over

him, because Mr. Lorenzo failed to provide the court with a factual legal basis that the Kingdom of Hawaii continues to exist with the state's -- in accordance with the state's sovereign nature.

What we're doing here, Your Honor, and recently, and really for the first time, is we are presenting the court with that evidence. And those evidence are the executive agreements. That is the Liliuokulani Assignment, which mandates the President of the United States, or the office of the President of the United States to administer Hawaiian Kingdom law. And the agreement of the res -- and the agreement of restoration, which is an executive agreement which mandates the President of the United States and the office of the President to restore the Kingdom of Hawaii. That is attached as Ms. Kawasaki's -- I believe it's exhibit 4A and 4B, which is attached to the expert memorandum of Dr. Keanu Sai.

Your Honor, in the -- essentially the argument or -- or the court's inclination is undeniably intertwined with the presumption that -- that if the Kingdom of Hawaii continues to exist, this state court does not have jurisdiction, or no state court has jurisdiction. And there is a presumption that allows the court and the -- and the plaintiff to argue that there is state statute which confers jurisdiction upon this court.

Now, it's a rebuttable presumption which requires us, the defendant, to provide the court with the evidence. Once that evidence is provided, that requires the court to acknowledge the nonexistence of that presumption. The court must weigh the evidence provided and make a determination solely based on that evidence and not with any presumption involved.

Again, Your Honor, those are the executive agreements. Ms., um, Kawasaki's memorandum on the motion to dismiss, as well as the memorandum on her reply brief, provides the court with the authorities to confirm that these exchange of notes are, in fact, executive agreements.

Furthermore, Your Honor, there has been no dispute or no opposition that -- that disputes the argument that we made that these are executive agreements. Because they cannot, we believe, respectfully.

I have now been arguing, Your Honor, this motion before judges of the courts of the circuit court and district court throughout the State of Hawaii, and nearly -- and probably over 20 times, and in not one instance has the plaintiff in the cases challenged the merits of the executive agreements to show that either it's not an executive agreement or that the executive agreements have been terminated. Because we believe, respectfully, again, Your Honor, they cannot.

Page four of Ms. Kawasaki's reply memorandum speaks to the Restatement, Third, Foreign Relation Laws of the United States. Essentially, Your Honor, what those foreign relation laws of the United States says is that an international agreement, which an executive agreement is, is an agreement between two or more states. And we're talking states in terms of their international relations. The executive agreements could not have occurred between President Grover Cleveland and Queen Liliuokulani unless they were states. Those agreements --

THE COURT: Mr. Kaiama, let me just interrupt for a minute. Which of the decisions is the one that I think, um, was an ICA decision? I'm trying to think of the judge who wrote it.

MR. KAIAMA: Judge Walter Heen?

THE COURT: Judge Heen's decision.

MR. KAIAMA: In State of Hawaii versus Lorenzo.

THE COURT: Lorenzo.

MR. KAIAMA: Yes.

THE COURT: And he makes the comment basically that, um, you know, what -- the -- in essence, I mean, it kinda left the door open by saying something to the effect that, 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 a

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 acts of judicial bodies that the court needs to -- and -- and the other political entities need to 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.

THE COURT: Yeah, go ahead.

MR. KAIAMA: And I respectfully disagree in this sense: That the executive agreements that we are bringing before the courts at this time was not available to Judge Heen at the time that motion was decided. These executive documents, while -- while official documents of the United States, were in -- little known to the public and not known to the courts at the time, so they were never presented as evidence to the court. And that's why Judge Heen says until a factual or legal basis is provided, that the Kingdom of Hawaii continues to exist. And he says until that happens

then people claiming, whether citizenship or otherwise, would be subject to the laws of the State of Hawaii.

Now, we are now meeting the requirements under Lorenzo and presenting essentially, for the first time, to the courts, the evidence that was asked for in Lorenzo. And that evidence are the executive agreements.

Now, I think the court is well aware -- and that's part of our argument -- executive agreements are the supreme law of the United States. By Article 6 of the U.S. Constitution, the supremacy clause. And part of our argument as well is that any state statute which runs contrary to the executive agreements are preempted.

So along the -- along the line of your -- our arguments, Your Honor, not only are we addressing what the court is requiring in State of Hawaii versus Lorenzo and presenting the evidence, the evidence we present, Your Honor, is irrefutably -- it's irrefutable that these are executive agreements and preempts state law, which is the state constitu -- I mean, excuse me, which is the state statute that plaintiff relies on in their complaint seeking to confer jurisdiction upon that court.

That state statute, Your Honor, runs contrary to the executive agreement, which calls for the administering of Hawaiian Kingdom law until the President of the United States can re -- restores the Kingdom of Hawaii, places the

queen back into its position, and the queen grants amnesty. Those are in the papers.

Now, Your Honor, what we're asking the court to do is not make a determination in its ruling that the Kingdom of Hawaii is to be restored, but what we're asking is what Lorenzo says, is that once we have met our burden, the court cannot have no other, we believe, no other recourse but to dismiss the complaint.

THE COURT: No, but, Mr. Kaiama, I think you failed -- in my mind, 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 may claim either being part of -- being the Hawaii, um, 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.

MR. KAIAMA: Your Honor --

THE COURT: I can't make that kind of a finding that basically it's, you know, like the atomic bomb for the judiciary.

MR. KAIAMA: I understand the contemplation of the consequences of the court's ruling. However, the contemplation of the consequences of the court's ruling is beyond the authority of the courts. What is in -- within

the authority of the courts is to make a determination that jurisdiction does not exist. That is within the court's authority.

Now, the actual restoration of the Kingdom of Hawaii belongs to the -- to the President of the United States and the office of the president, not to the courts. What I'm asking the court to do and what we believe is entirely correct is that the court acknowledge, which the president did in 1898, acknowledge that these are executive agreements, which binds him and his office to faithfully administer Hawaiian Kingdom law until the President of the United States is able to restore the Kingdom of Hawaii. So what we're asking the court to do is, essentially it is the, in the time being, it is the military courts, under article two, that would administer Hawaiian Kingdom law until the kingdom is restored.

THE COURT: Okay.

MR. KAIAMA: So -- so, Your Honor, um, I know Your Honor also made an inclination concerning my client's not asserting a citizenship position.

THE COURT: No, I'm saying I didn't perceive one.

MR. KAIAMA: Right, you didn't perceive -- and actually one was not made. The reason one is not made is Ms. Kawasaki does not claim to be a citizen of the Kingdom

of Hawaii. At least not now. But what's occurring here is that the plaintiff is seeking to get writ of possession or to get an order concerning land which is part of the Kingdom of Hawaii. And judgments concerning land, including evictions and writ of possessions, belongs to the courts of the Kingdom of Hawaii, respectfully, not the circuit courts of the State of Hawaii, because of the arguments we've set forth.

Also, in the reply memorandum, Your Honor, we -- Miss Kawasaki has provided the courts and sought to evoke estoppel with respect to the defendant's arguments. Because the court -- because the pres -- excuse me, it is a little bit difficult to talk about. Because the United States have already acknowledged -- already acknowledged, through the President of the United States, that being Grover Cleveland, that the Kingdom of Hawaii is, in fact, the de jure and de facto government, and that the provisional government was never de jure or never de facto, plaintiffs at this point are estopped from making any argument, which runs contrary to the acknowledgment of the United States. And therefore they're estopped from making the argument -- the arguments that they've made that this court can confer juris -- that this court has jurisdiction pursuant to state statute.

Essentially, Your Honor, Ms. Kawasaki is asking the court to strike defendant's arguments in its entire --

excuse me, plaintiff's arguments in its entirety, because of the principles of judicial -- principles estoppel. Ms. Kawasaki has provided, again, the authorities concerning estoppel, including, um, authority of estoppel recognized under international law.

Your Honor, what we're presenting to the courts is the evidence. What we're presenting to the courts are legal arguments that have not been refuted or cannot be refuted, we respectfully submit. Miss Kawasaki, in her motion to dismiss, asked the court to take judicial notice of documents. And it's set forth in, and just for the court's convenience --

THE COURT: Okay, let me address that right now.

MR. KAIAMA: Yes.

THE COURT: As for the request for judicial notice, I think I can go ahead and do that with respect to the, um, exhibit one, the Hawaii Kingdom Constitution. The only question I have is, was the original in English or Hawaiian, and is this a translation?

MR. KAIAMA: You know, I'm -- I'm sorry, Your Honor, I'm not able to answer this question at this time, but if the court wishes, I can clearly provide that pursuant to a declaration.

THE COURT: Well, in --

MR. KAIAMA: A supplemental --

THE COURT: -- any event, I'm -- I think we have a copy of this in our library, so I'm taking judicial notice of it and, um, also chapter four of the penal code of the kingdom. Was there a -- a date on that?

MR. KAIAMA: Okay, hold on one second, Your Honor.

THE COURT: I'm just -- reason I'm saying that is I'm looking at the list that's in the memorandum, not at the exhibit itself.

MR. KAIAMA: I'm trying to see if I can help find that for you, Your Honor.

THE COURT: Part of the problem, it wasn't tabbed.

MR. KAIAMA: Um, yeah, Penal Code of the Kingdom of Hawaii from the Penal Code of 1850. It was printed at the Government Press, Honolulu, Oahu, 1869.

THE COURT: Okay, I have it now. So we'll take judicial notice of that, also chapter seven, the portion of the Compiled Laws of Hawaii Kingdom relating to the department of foreign affairs.

MR. KAIAMA: Thank you. Chapter eight, Your Honor.

THE COURT: All right.

MR. KAIAMA: Okay.

THE COURT: So the court will take judicial

notice of that. With respect to Dr. David Sai's expert memorandum, the court's not gonna take judicial notice of that. However, I'm just gonna treat that as a treatise the that the court can consider for information with respect to reaching its decision, much like a law review article. Same as the memorandum of Doctor -- there are several, but all of the Dr. Sai memorandums, that's how I'm treating it.

MR. KAIAMA: Thank you, Your Honor.

THE COURT: The other matters are treaties and if they're treaties and if they're -- and they appear to be published in the authorized publications of the United States, court would also take judicial notice of the four treaties and conventions. And all of the other matters are -- appear to be reported cases, so I don't think I need to take judicial notice of that. I mean, courts are allowed to refer to other court's opinions. Okay, so I think I've addressed all of those.

MR. KAIAMA: Yes, Your Honor. If I may -- yes, Your Honor. Thank you very much. Again, and I don't know if it makes a difference to the court, of course State of Hawaii versus Lorenzo is a ICA Hawaii court decision, United States versus Belmont, versus Pink and American Association -- Insurance Association versus Garamendi, Your Honor, is a U.S. Supreme Court case, and I'm not sure if that makes a difference into whether the court will take judicial notice

of that or -- again, um, or not.

Um, my question, Your Honor, is with respect to the expert memorandum of Dr. Keanu Sai. He does, within his expert memorandum, provide four exhibits, exhibits A, B, C, and D. Again, 4A is the, uh, what we refer to as the Liliuokulani Assignment. 4B is the Grover Cleveland Agreement of Restoration. Essentially, Your Honor, those are the executive agreements. Um, exhibits C and D, Your Honor, are statements made on the floor of congress by representative Thomas Ball and Senator Agustus Bacon in 1898. Your Honor, and just for --

THE COURT: Mr. Kaiama, to the extent of the materials that represent analysis or opinions by Dr. Sai, again, I'm taking that as a treatise or a -- like a law review article. As to those matters that are apparently reported as part of the, uh, federal compendium of documents, and so forth, I'll take judicial notice of it, 'cause they're readily available, I think, not only through these exhibits but also through other sources.

MR. KAIAMA: Yes, Your Honor. They are official government publications.

THE COURT: All right.

MR. KAIAMA: Thank you, Your Honor.

THE COURT: Just because, well, my concern was, you know, just because Dr. Sai's memorandum may have a

government printing office number doesn't make it official federal document. It's -- all it means it's cataloged.

MR. KAIAMA: Okay.

THE COURT: All right?

MR. KAIAMA: And just so that I understand, Your Honor, and forgive me for asking, my understanding was that the court would take judicial notice of that 4A, B, C, and D.

THE COURT: If it -- those are exhibits of other -- of matters, which they appear to be, that are reported, for example, in a congressional record or some other kind of, um --

MR. KAIAMA: And they are, Your Honor.

THE COURT: -- yeah, source that's easily -- it's easily retrievable and to determine them, yeah, I'm taking judicial notice of it.

MR. KAIAMA: Thank you, Your Honor.

THE COURT: Okay?

MR. KAIAMA: And I am happy to answer any additional inclinations of the court, but I believe that provides us -- provide -- outlines our argument, Your Honor.

Again, U.S. versus Pink, Garamendi -- American Association versus Garamendi, and U.S. versus Belmont support the arguments that I made earlier, Your Honor, that executive agreements are treaties under the United States

Constitution and under article six of the supreme law of the land. And those cases, Your Honor, supreme court cases, stand for the proposition that any state law which is contrary to the executive agreements are preempted.

Also in the, um, Foreign Relations Restatement of Third that I presented to the court, Your Honor, again, as international agreements, these international agreements are binding on the United States to faithful execution. And, again, any municipal or state law to the contrary would be preempted as well.

THE COURT: Okay, thank you. Ms. Hirosane, any arguments?

MS. HIROSANE: Your Honor, just -- just really briefly. Just to add to what we've already briefed, uh, Ms. Kawasaki admittedly is not claiming that she's a citizen of this -- of the Kingdom of Hawaii, if it does exist. And as you stated from the outset of this hearing, we're still in -- it's an evolving issue within the court system. But our position remains if Ms. Kawasaki is admittedly not a citizen then how can she raise these arguments to defeat this court's subject matter jurisdiction in these proceedings?

THE COURT: I think what he's saying is that if -- the argument is that if, in fact, I buy into his arguments then this court has no jurisdiction over any

matter, because it's illegal. That's his analysis, I think.

MS. HIROSANE: And that's -- that's my understanding of it too, Your Honor.

THE COURT: Okay. So the court will deny the motion to dismiss the complaint pursuant to Hawaii Rules of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction.

Having reviewed the matters and the prior court decisions, the court is of the opinion and decides that the court does have subject jurisdiction over the matter of the ejectment case and that the arguments raised by Mr. Kaiama, in essence, have been resolved by the prior appellate court decisions, and the raising of the executive agreements, in my mind, is not persuasive. Those matters were in existence at the time of the prior court decisions, they were available to the court, they were available to attorneys, and I'm not convinced that it's now something new or provides new law or new facts that would cause the prior appellate decisions to be overturned. Okay? So --

MR. KAIAMA: Your Honor, thank you. I know she's to prepare the order. Your Honor, respectfully, I would just preserve Ms. Kawasaki's right to take exception to the court's decision today.

THE COURT: Yeah, that's not necessary.

MR. KAIAMA: And reserve her rights to file an

appeal. Your Honor, I have been asked by Ms. Kawasaki, 'cause this is an issue concerning the stay matter, she does intend to file an appeal from the court's decision concerning the motion to dismiss as soon as the order is filed, and I know that's gonna take a short period a time. I've been asked by Ms. Kawasaki to make a request to continue the stay while she files -- while she appeals the matter to the appellate courts.

THE COURT: Mr. Kaiama, I'm going to deny the request. I think once, you know, the whole thing about what's the final order and what you appeal from, um, it's such an art now. And I -- I hate to even venture a guess. Um, it seems to me that the -- you might have two appealable orders here. I'm not sure if this decision may be a separate appealable order as a collateral matter, because it attacks jurisdiction after the other judgment. But I'm just stating that because it may be, uh, things that counsel need to talk to Ms. Kawasaki about in terms of preserving her rights to appeal, in terms of filing notices for appeal. Uh, but, again, it's pretty clear, if you don't file your written notice of appeal timely then you're out.

MR. KAIAMA: (Nodding head.)

THE COURT: So I guess, Ms. Hirosane, you're sending the proposed order directly to Ms. Kawasaki, is that correct?

MR. KAIAMA: That is correct, Your Honor.

MS. HIROSANE: Your Honor, may I clarify this? Am I to include language with regard to Mr. Kaiama's oral motion to stay pending appeal?

THE COURT: I'm sorry? No, I don't --

MS. HIROSANE: Am I to include --

THE COURT: Yeah, there is an order, motion for staying the appeal, but this is the nature of I -- I -- of a writ of possession, right?

MS. HIROSANE: That's correct, Your Honor.

THE COURT: Okay, so is this like an injunction. I mean, they have separate provisions with respect to the stays on injunctive kind of relief, so is that the provision that applies with respect to a stay? Or is it now, what? She has to post a supersedeas bond for a stay?

MS. HIROSANE: That would be our position, Your Honor.

THE COURT: And what's the amount of the bond?

MS. HIROSANE: Well, we have been --

THE COURT: There's no judgment other that the judgment for the writ.

MR. KAIAMA: And, Your Honor, my understanding is that she is still -- she still has the option to provide the court with a written motion for stay. I am aware of case law which says that the issuance of a supersedeas bond

is really discretionary upon the court, and the court can decide the amount of the bond if it decides to require a supersedeas bond.

THE COURT: Okay, but that's why I'm saying I don't want to rule on the stay now.

MR. KAIAMA: Okay.

THE COURT: I think the judgment should issue, you file your notice of appeal and a motion for a stay, I think. And that way the, hopefully, the issues will be clearer as to what the requirements are for a stay, if any, and, you know, what the court needs to decide with respect to any issues concerning the stay. Okay?

MR. KAIAMA: Thank you, Your Honor.

THE COURT: So the oral motion for a stay is denied.

MR. KAIAMA: Thank you, Your Honor.

MS. HIROSANE: Thank you, Your Honor.

THE DEFENDANT, MS. KAWASAKI: Excuse me, Your Honor. Could I have a transcript of today's --

MR. KAIAMA: Oh, you go down there and apply.

MS. KAWASAKI: Oh, okay. Thank you.

THE COURT: Okay. Thank you. Next case.

MS. KAWASAKI: Thank you.

(Whereupon the proceedings were concluded.)

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C E R T I F I C A T E

STATE OF HAWAII)
)
COUNTY OF HAWAII)
)

I, JENNIFER WHETSTONE, a Certified Shorthand Reporter in the State of Hawaii, do hereby certify that the foregoing pages, 1 through 25, inclusive, comprise a full, true, and correct transcript of the proceedings had on June 15, 2012, at 9:13 a.m., in connection with the above-entitled cause.

Dated: June 20, 2012.

OFFICIAL COURT REPORTER

JENNIFER WHETSTONE

Exhibit “6”

Proclamation

Whereas, the armed forces of the United States of America have invaded and occupied the shores of the Hawaiian Islands on two separate occasions, the first being from January 16, 1893 to April 1, 1893, and the second since August 12, 1898 to the present, whereby the latter being an illegal and prolonged occupation; and

Whereas, the armed forces of the United States of America on January 17, 1893 aided and abetted a small group of insurgents in seizing the Executive office of the Hawaiian Kingdom government and thereafter participated in the coercion of all government employees and officials in the executive and judicial branches of the government of the Hawaiian Kingdom to sign oaths of allegiance to the insurgency calling themselves the so-called provisional government; and

Whereas, United States President Grover Cleveland concluded, through a presidential investigation, that the overthrow of the Hawaiian Kingdom government was unlawful, and that the United States bears the sole responsibility for the overthrow of the government of a friendly State, and provide restitution; and

Whereas, executive mediation took place between United States Minister Plenipotentiary Albert Willis and Her Majesty Queen Lili'uokalani beginning on November 13, 1893, at the United States Legation in the city of Honolulu, and on December 18, 1893 an agreement was reached through *exchange of notes* committing the United States to reinstate the government, and thereafter the Hawaiian Kingdom to grant amnesty to the insurgents; and

Whereas, United States President Cleveland and his successors in office failed to faithfully execute the agreement and allowed the insurgency to gain power through the hiring of American mercenaries in order to seek annexation to the United States of America; and

Whereas, during the Spanish-American War, the armed forces of the United States of America unlawfully occupied the Hawaiian Islands on August 12, 1898, being a neutral State, to wage war against the Spanish colonies of the Philippines and Guam in the Pacific Ocean; and

Whereas, since the second occupation, the armed forces of the United States of America have not complied with international law, the international laws of occupation, both customary and by conventions, and international humanitarian law; and

Whereas, the armed forces of the United States of America under the guise of civilian authority seized control of the government of the Hawaiian Kingdom calling itself the so-called Republic of Hawai'i, being the successor to the provisional government, and renamed the same as the government of the Territory of Hawai'i on April 30, 1900, and then subsequently renamed as the government of the State of Hawai'i on March 18, 1959; and

Whereas, the so-called provisional government, the Republic of Hawai'i, the Territory of Hawai'i, and the State of Hawai'i have no legal basis under Hawaiian Kingdom law or the international laws of occupation; and

Whereas, the occupant State has unlawfully levied pecuniary contributions of various kinds that included taxes and the imposition of fines in violation of international law; and

Whereas, the occupant State has unlawfully seized public and private property for the construction of its government agencies and military installations from the occupied State and its inhabitants, and that restoration and compensation shall be made under *jus post liminii*; and

Whereas, the failure of the armed forces of the United States of America to administer the laws of the Hawaiian Kingdom as

it stood prior to the insurrection of July 6, 1887 has placed the Hawaiian Kingdom into a state of emergency that could lead to economic ruination and calamity; and

Whereas, war crimes have and continue to be committed as a result of the failure of the armed forces of the United States of America to administer the laws of the Hawaiian Kingdom in accordance with the 1907 Hague Regulations and the 1949 Geneva Convention IV; and

Whereas, customary international law recognizes that the rules on belligerent occupation will also apply where a belligerent State, in the course of war, occupies neutral territory, being the territory of the Hawaiian Kingdom; and

Whereas, customary international law recognizes that when neutral territory is militarily occupied by a belligerent, the occupant State does not possess a wide range of rights with regard to the occupied State and its inhabitants as it would in occupied enemy territory; and

Whereas, customary international law recognizes that legislative power remains with the government of the occupied State during military occupation of the occupied State's territory; and

Whereas, Her late Majesty Queen Lili'uokalani died on November 11, 1917, without an heir apparent proclaimed in accordance with Article 22 of the 1864 Constitution, as amended; and

Whereas, it is provided by Article 33 of the Constitution that should a Monarch die without confirming an heir apparent in accordance with Hawaiian law, the Cabinet Council shall serve as an *acting* Council of Regency who shall administer the Government in the name of the Monarch, and exercise all the Powers which are constitutionally vested in the Monarch, until the Legislative Assembly may be assembled to elect by ballot a *de jure* Regent or Council of Regency; and

Whereas, according to Article 42 of the Constitution, the Cabinet Council consists of the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Finance and the Attorney General of the Kingdom; and

Whereas, an *acting* Regency, by virtue of the offices made vacant in the Cabinet Council, was established under the doctrine of necessity by proclamation on February 28, 1997, pursuant to Article 33 of the Constitution and possesses the constitutional authority to temporarily exercise the Royal Power of the Hawaiian Kingdom under Article 32; and

Whereas, the Legislative Assembly is unable to be assembled in accordance with Title 3—Of the Legislative Department, Civil Code of the Hawaiian Islands (Compiled Laws, 1884), in order to elect by ballot a *de jure* Regent or Council of Regency as a direct result of the prolonged occupation of the Hawaiian Kingdom by the armed forces of the United States of America and the Rules of Land Warfare of the United States; and

Whereas, the public safety requires:

Now, therefore, We, the **acting Council of Regency** of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby acknowledge that acts necessary to peace and good order among the citizenry and residents of the Hawaiian Kingdom, such for example, as acts sanctioning and protecting marriage and the domestic relations, governing the course of descents, regulating the conveyance and transfer of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts, which would be valid if emanating from a lawful government, must be regarded in general as valid when proceeding from an actual, though unlawful government, but acts in furtherance or in support of rebellion or collaborating against the Hawaiian Kingdom, or intended to defeat the just rights of the citizenry and residents

under the laws of the Hawaiian Kingdom, and other acts of like nature, must, in general, be regarded as invalid and void;

And, We do hereby proclaim that from the date of this proclamation all laws that have emanated from an unlawful legislature since the insurrection began on July 6, 1887 to the present, to include United States legislation, 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;

And, We do hereby further proclaim that the currency of the United States shall be a legal tender at their nominal value in payment for all debts within this Kingdom pursuant to *An Act To Regulate the Currency* (1876);

And, We do hereby call upon the said Commander of the United States Pacific Command, and those subordinate military personnel to whom he may delegate such authority to seize control of its government, calling itself the State of Hawai'i, by proclaiming the establishment of a military government, during the present prolonged military occupation

and until the military occupation has ended, to exercise those powers allowable under the international laws of occupation and international humanitarian law;

And, We do require all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, to obey promptly and fully, in letter and in spirit, such proclamations, rules, regulations and orders, as the military government may issue during the present military occupation of the Hawaiian Kingdom so long as these proclamations, rules, regulations and orders are in compliance with the laws and provisional laws of the Hawaiian Kingdom, the international laws of occupation and international humanitarian law;

And, We do further require that all courts of the Hawaiian Kingdom, whether judicial or administrative, shall administer the provisional laws hereinbefore proclaimed forthwith;

And, We do further require that Consular agents of foreign States within the territory of the Hawaiian Kingdom shall comply with Article X, Chapter VIII, Title 2—Of the Administration of Government, Civil Code of the Hawaiian Islands (Compiled Laws, 1884) and the Law of Nations;

And, We do further require every person now holding any office of profit or emolument under the State of Hawai'i and its Counties, being the Hawaiian government, take and subscribe the oath of allegiance in accordance with *An Act to Provide for the Taking of the Oath of Allegiance by Persons in the employ of the Hawaiian Government* (1874).

In Witness Whereof, We have hereunto set our hand, and caused the Great Seal of the Kingdom to be affixed this 10th day of October A.D. 2014.

David Keanu Sai, Ph.D.
Chairman of the *acting* Council of Regency
Acting Minister of the Interior

Peter Umialiloa Sai,
Acting Minister of Foreign Affairs

Kau'i P. Sai-Dudoit,
Acting Minister of Finance

Dexter Ke'eaumoku Ka'iama, *Esq.*,
Acting Attorney General

Exhibit “7”

Annex 2

CASES CONDUCTED UNDER THE AUSPICES OF THE PCA OR WITH THE COOPERATION OF THE INTERNATIONAL BUREAU

For summaries of the arbitral awards in many of these cases, see P. Hamilton, et al., *The Permanent Court of Arbitration: International Arbitration and Dispute Resolution – Summaries of Awards, Settlement Agreements and Reports* (Kluwer Law International 1999) pp. 29-281, and B. Macmahon and F. Smith, *Permanent Court of Arbitration Summaries of Awards 1999-2009* (TMC Asser Press 2010) pp. 39-312.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
1.	United States of America – Republic of Mexico	Pious Fund of the Californias	22 - 05 - 1902	14 - 10 - 1902	**Matzen** Sir Fry de Martens Asser de Savornin Lohman
2.	Great Britain, Germany and Italy – Venezuela	Preferential Treatment of Claims of Blockading Powers Against Venezuela	07 - 05 - 1903	22 - 02 - 1904	**Mourawieff** Lammasch de Martens
3.	Japan – Germany, France and Great Britain	Japanese House Tax leases held in perpetuity	28 - 08 - 1902	22 - 05 - 1905	**Gram** Renault Motono
4.	France – Great Britain	Muscat Dhows fishing boats of Muscat	13 - 10 - 1904	08 - 08 - 1905	**Lammasch** Fuller de Savornin Lohman
5.	France – Germany	Deserters of Casablanca	10/24 - 11 - 1908	22 - 05 - 1909	**Hammarskjöld** Sir Fry Fusinato Kriege Renault
6.	Norway – Sweden[2]	Maritime Boundary Grisbådarna Case	14 - 03 - 1908	23 - 10 - 1909	**Loeff**[3] Beichmann Hammarskjöld
7.	United States of America – Great Britain	North Atlantic Coast Fisheries	27 - 01 - 1909	07 - 09 - 1910	**Lammasch** de Savornin Lohman Gray Sir Fitzpatrick Drago
8.	United States of Venezuela – United States of America	Orinoco Steamship Company	13 - 02 - 1909	25 - 10 - 1910	**Lammasch** Beernaert de Quesada
9.	France – Great Britain	Arrest and Restoration of Savarkar	25 - 10 - 1910	24 - 02 - 1911	**Beernaert** Ce de Desart Renault Gram de Savornin Lohman

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
10.	Italy – Peru	Canevaro Claim	25 - 04 - 1910	03 - 05 - 1912	**Renault** Fusinato Alvarez Calderón
11.	Russia – Turkey[2]	Russian Claim for Indemnities damages claimed by Russia for delay in payment of compensation owed to Russians injured in the war of 1877-1878	22 - 07 - 1910/ 04 - 08 - 1910	11 - 11 - 1912	**Lardy** Bon de Taube Mandelstam[3] H.A. Bey[3] A.R. Bey[3]
12.	France – Italy	French Postal Vessel "Manouba"	26 - 01 - 1912/ 06 - 03 - 1912	06 - 05 - 1913	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
13.	France – Italy	The "Carthage"	26 - 01 - 1912/ 06 - 03 - 1912	06 - 05 - 1913	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
14.	France – Italy	The "Tavignano," "Camouna" and "Gaulois" Incident	08 - 11 - 1912	Settled by agreement of parties	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
15.	The Netherlands – Portugal[4]	Dutch-Portuguese Boundaries on the Island of Timor	03 - 04 - 1913	25 - 06 - 1914	**Lardy**
16.	Great Britain, Spain and France – Portugal[5]	Expropriated Religious Properties	31 - 07 - 1913	02/04 - 09 - 1920	**Root** de Savornin Lohman Lardy
17.	France – Peru[2]	French claims against Peru	02 - 02 - 1914	11 - 10 - 1921	**Ostertag**[3] Sarrut[3] Elguera
18.	United States of America – Norway[2]	Norwegian shipowners' claims	30 - 06 - 1921	13 - 10 - 1922	**Vallotton**[3] Anderson[3] Vogt[3]
19.	United States of America – The Netherlands[4]	The Island of Palmas case (or Miangas)	23 - 01 - 1925	04 - 04 - 1928	**Huber**
20.	Great Britain – France[2]	Chevreau claims	04 - 03 - 1930	09 - 06 - 1931	**Beichmann**
21.	Sweden – United States of America[2]	Claims of the Nordstjernan company	17 - 12 - 1930	18 - 07 - 1932	**Borel**
22.	Radio Corporation of America – China[2]	Interpretation of a contract of radio-telegraphic traffic	10 - 11 - 1928	13 - 04 - 1935	**van Hamel**[3] Hubert[3] Furrer[3]
23.	States of Levant under French Mandate – Egypt[2]	Radio-Orient	11 - 11 - 1938	02 - 04 - 1940	**van Lanschot**[3] Raestad Mondrup[3]

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
24.	France – Greece[2]	Administration of lighthouses	15 - 07 - 1931	24 - 07 - 1956	**Verzijl**[3] Mestre Charbouris[3]
25.	Turriff Construction (Sudan) Limited – Sudan[2]	Interpretation of a construction contract	21 - 10 - 1966	23 - 04 - 1970	**Erades**[3] Parker[3] Bentsi-Enchill[3]
26.	United States of America – United Kingdom of Great Britain and Northern Ireland[2]	Heathrow Airport user charges treaty obligations; amount of damages	16 - 12 - 1988	30 - 11 - 1992 02 - 05 - 1994 Settlement on amount of damages	**Foighel**[3] Fielding[3] Lever[3]
27.	Moiz Goh Pte. Ltd – State Timber Corporation of Sri Lanka[2]	Contract dispute	14 - 12 - 1989	05 - 05 - 1997	**Pinto**[3]
28.	African State – two foreign nationals[2]	Investment dispute	–	30 - 09 - 1997 Settled by agreement of parties	–
29.	Technosystem SpA – Taraba State Government and the Federal Government of Nigeria[2]	Contract dispute	21 - 02 - 1996	25 - 11 - 1996 Lack of jurisdiction	**Ajibola**
30.	Asian State-owned enterprise – three European enterprises[2]	Contract dispute	–	02 - 10 - 1996 Award on agreed terms	–
31.	State of Eritrea – Republic of Yemen[2]	Eritrea/Yemen: Sovereignty of various Red Sea Islands sovereignty; maritime delimitation	03 - 10 - 1996	09 - 10 - 1998 Award on sovereignty 17 - 12 - 1999 Award on maritime delimitation	**Jennings** Schwebel[3] El-Kosheri[3] Highet[3] Higgins
32.	Italy – Costa Rica[2]	Loan agreement between Italy and Costa Rica dispute arising under financing agreement	11 - 09 - 1997	26 - 06 - 1998	**Lalive**[3] Ferrari Bravo Hernandez Valle[3]
33.	Larsen – Hawaiian Kingdom[2]	Treaty interpretation	30 - 10 - 1999	05 - 02 - 2001	**Crawford**[3] Greenwood[3] Griffith[3]
34.	The Netherlands – France[2]	Treaty interpretation	21 - 10 -/17 - 12 - 1999	12 - 03 - 2004	**Skubiszewski** Guillaume Kooijmans[3]
35.	European corporation – African government	Contract dispute	04 - 08 - 2000	18 - 02 - 2003 Settled by agreement of parties	–
36.	Eritrea-Ethiopia Boundary Commission[2]	Boundary dispute	12 - 12 - 2000	13 - 04 - 2002	**Lauterpacht** Ajibola Reisman[3] Schwebel[3] Watts

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5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
37.	Eritrea-Ethiopia Claims Commission[2]	Settlement of claims arising from armed conflict	12 - 12 - 2000	01 - 07 - 2003 Partial Awards for prisoner of war claims 28 - 04 - 2004 Partial Awards for Central Front claims 17 - 12 - 2004 Partial Awards for civilians claims 19 - 12 - 2005 Partial Awards for remaining liability claims 17 - 08 - 2009 Final Award for damages	**van Houtte**[3] Aldrich[3] Crook[3] Paul[3] Reed[3]
38.	Dr. Horst Reineccius; First Eagle SoGen Funds, Inc.; Mr.P.M. Mathieu – Bank for International Settlements[2]	Dispute with former private shareholders	07 - 03 - 2001 31 - 08 - 2001 24 - 10 - 2001	22 - 11 - 2002 Partial Award 19 - 09 - 2003 Final Award	**Reisman**[3] van den Berg[3] Frowein[3] Krafft[3] Lagarde[3]
39.	Ireland – United Kingdom[2]	Proceedings pursuant to the OSPAR Convention	15 - 06 - 2001	02 - 07 - 2003	**Reisman**[3] Griffith[3] Mustill[3]
40.	Saluka Investments B.V. – Czech Republic[2]	Investment treaty dispute	18 - 06 - 2001	17 - 03 - 2006 Partial Award	**Watts** Behrens[3] Fortier[3]
41.	Ireland – United Kingdom[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS) "MOX Plant Case"	25 - 10 - 2001	06 - 06 - 2008 Termination order following withdrawal of claim	**Mensah**[3] Fortier[3] Hafner Crawford[3] Watts
42.	European government – European corporation[2]	Investment treaty dispute	30 - 04 - 2002	24 - 05 - 2004 Settled by agreement of parties	–
43.	Two corporations – Asian government[2]	Contract dispute	16 - 08 - 2002	12 - 10 - 2004 Partial Award	–
44.	Telekom Malaysia Berhad – Government of Ghana[2]	Investment treaty dispute	10 - 02 - 2003	01 - 11 - 2005 Award on agreed terms	**Van den Berg**[3] Gaillard[3] Layton[3]
45.	Belgium – The Netherlands[2]	Dispute regarding the use and modernization of the "IJzeren Rijn" on the territory of The Netherlands	22/23 - 07 - 2003	24 - 05 - 2005	**Higgins** Schrans[3] Simma[3] Soons[3] Tomka
46.	Barbados – Trinidad and Tobago[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	16 - 02 - 2004	11 - 04 - 2006	**Schwebel**[3] Brownlie[3] Orrego Vicuña[3] Lowe[3] Watts
47.	Guyana – Suriname[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	24 - 02 - 2004	17 - 09 - 2007	**Nelson**[3] Hossain[3] Franck[3] Shearer Smit[3]

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	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
48.	Malaysia – Singapore[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	04 - 07 - 2003	01 - 09 - 2005 Award on agreed terms	**Pinto**[3] Hossain[3] Shearer Oxman[3] Watts
49.	1.The Channel Tunnel Group Limited 2. France-Mache S.A. – 1. United Kingdom 2. France[2]	Proceedings pursuant to the Treaty of Canterbury Concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link (Eurotunnel)	17 - 12 - 2003	30 - 01 - 2007 Partial Award 2010 Termination order	**Crawford**[3] Fortier[3] Guillaume Millett[3] Paulsson
50.	Chemtura Corporation (formerly Crompton Corporation) – Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	17 - 10 - 2002/ 17 - 02 - 2005	02 - 08 - 2010	**Kaufmann-Kohler**[3] Brower[3] Crawford[3]
51.	Vito G. Gallo – Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	30 - 03 - 2007	15 – 9 – 2011	**Fernández-Armesto**[3] Castel[3] Lévy[3]
52.	Romak S.A. - The Republic of Uzbekistan[2]	Proceedings pursuant to the Agreement between the Swiss Confederation and the Republic of Uzbekistan on the Promotion and the Reciprocal Protection of Investments	06 - 09 - 2007	26 - 11 - 2009	**Mantilla-Serrano**[3] Rubins[3] Molfessis[3]
53.	The Government of Sudan – The Sudan People's Liberation Movement/Army[2]	Delimitation of the Abyei area	11 - 07 - 2008	22 – 07 - 2009	**Dupuy**[3] Al-Khasawneh Hafner Reisman[3] Schwebel
54.	Centerra Gold Inc. & Kumtor Gold Co. – Kyrgyz Republic[2]	Investment agreement dispute	08 - 03 - 2006	29 - 06 - 2009 Termination order	**Van den Berg**[3]
55.	TCW Group & Dominican Energy Holdings – Dominican Republic[2]	Proceedings conducted under the Central America-DR-USA Free Trade Agreement (CAFTA-DR)	21 - 12 - 2007	16 – 07 - 2009 Consent Award	**Böckstiegel**[3] Fernández-Armesto[3] Kantor[3]
56.	Bilcon of Delaware *et al.* – Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	26-05-2008	-	**Simma**[3] McRae Schwartz[3]

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	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
57.	HICEE B.V. – The Slovak Republic[2]	Proceedings pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic	17 - 12 - 2008	23 - 05 - 2011 Partial Award 17 - 10 - 2011 Supplementary and Final Award	**Berman** Tomka Brower[3]
58.	Polis Fundi Immobliare di Banche Popolare S.G.R.p.A – International Fund for Agricultural Development (IFAD)[2]	Contract dispute	10 - 11 - 2009	17 - 12 - 2010	**Reinisch**[3] Canu[3] Stern[3]
59.	European American Investment Bank AG – The Slovak Republic[2]	Proceedings pursuant to the Agreement Between the Republic of Austria and the Czech and Slovak Federal Republic Concerning the Promotion and Protection of Investments	23 - 11 - 2009	–	**Greenwood** Petsche[3] Stern[3]
60.	Bangladesh – India[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	08 - 10 - 2009	–	**Wolfrum**[3] Mensah[3] Rao[3] Shearer Treves[3]
61.	China Heilongjiang International Economic & Technical Cooperative Corporation *et al.* – Mongolia[2]	Proceedings pursuant to the Agreement between the Government of the Mongolian People's Republic and the Government of the People's Republic of China concerning the Encouragement and Reciprocal Protection of Investments dated August 26, 1991	12 - 02 - 2010	–	**Donovan**[3] Banifatemi[3] Clodfelter[3]
62.	Chevron Corporation & Texaco Corporation – The Republic of Ecuador	Proceedings pursuant to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment	22 – 05 – 2007	31 – 08 – 2011	**Böckstiegel**[3] Brower[3] Van den Berg[3]

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	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
63.	Achmea B.V. (formerly known as Eureko B.V.) – The Slovak Republic	Proceedings pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments Between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic	01 – 10 – 2008		**Lowe**[3] Van den Berg[3] Veeder[3]
64.	Chevron Corporation & Texaco Corporation – The Republic of Ecuador	Proceedings pursuant to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment	23 – 09 – 2009		**Veeder**[3] Grigera Naón[3] Lowe[3]
65.	Pakistan – India	Indus Waters Treaty Arbitration	17 – 05 – 2010		**Schwebel** Berman Wheater[3] Caflisch Paulsson Simma[3] Tomka
66.	Guaracachi America, Inc. & Rurelec PLC – The Plurinational State of Bolivia	Proceedings pursuant to the Treaty between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of Bolivia for the Promotion and Protection of Investments	10 – 11 – 2010		**Júdice**[3] Conthe[3] Vinuesa
67.	The Republic of Mauritius - The United Kingdom of Great Britain and Northern Ireland	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	20 – 12 – 2010		**Shearer** Greenwood Hoffmann[3] Kateka[3] Wolfrum[3]

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Exhibit “8”

Larsen v. Hawaiian Kingdom

Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom.

In determining whether to accept or decline to exercise jurisdiction, the Tribunal considered the questions of whether there was a legal dispute between the parties to the proceeding, and whether the tribunal could make a decision regarding that dispute, if the very subject matter of the decision would be the rights or obligations of a State not party to the proceedings.

The Tribunal underlined the many points of agreement between the parties, particularly with respect to the propositions that Hawaii was never lawfully incorporated into the United States, and that it continued to exist as a matter of international law. The Tribunal noted that if there existed a dispute, it concerned whether the respondent has fulfilled what both parties maintain is its duty to protect the Claimant, not in the abstract but against the acts of the United States of America as the occupant of the Hawaiian islands. Moreover, the United States' actions would not give rise to a duty of protection in international law unless they were themselves unlawful in international law. The Tribunal concluded that it could not determine whether the Respondent has failed to discharge its obligations towards the Claimant without ruling on the legality of the acts of the United States of America – something the Tribunal was precluded from doing as the United States was not party to the case.

Case information

NAME(S) OF CLAIMANT(S)	Lance Paul Larsen (Private entity)
NAME(S) OF RESPONDENT(S)	The Hawaiian Kingdom (State)
NAMES OF PARTIES	-
CASE NUMBER	1999-01
ADMINISTERING INSTITUTION	Permanent Court of Arbitration (PCA)
CASE STATUS	Concluded
TYPE OF CASE	Other proceedings
SUBJECT MATTER OR ECONOMIC SECTOR	Treaty interpretation
RULES USED IN ARBITRAL PROCEEDINGS	UNCITRAL Arbitration Rules 1976
TREATY OR CONTRACT UNDER WHICH PROCEEDINGS WERE COMMENCED	[Other]
LANGUAGE OF PROCEEDING	English
SEAT OF ARBITRATION (BY COUNTRY)	Netherlands
ARBITRATOR(S)	Dr. Gavan Griffith QC Professor Christopher J. Greenwood QC Professor James Crawford SC (President of the Tribunal)
REPRESENTATIVES OF THE CLAIMANT(S)	Ms. Ninia Parks, Counsel and Agent
REPRESENTATIVES OF THE RESPONDENT(S)	Mr. David Keanu Sai, Agent Mr. Peter Umialiloa Sai, First deputy agent Mr. Gary Victor Dubin, Second deputy agent and counsel
REPRESENTATIVES OF THE PARTIES	
NUMBER OF ARBITRATORS IN CASE	3
DATE OF COMMENCEMENT OF PROCEEDING	08 November 1999
DATE OF ISSUE OF FINAL AWARD	05 February 2001
LENGTH OF PROCEEDINGS	1-2 years

ADDITIONAL NOTES -

Documents

- Award or other decision
- Other

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