

CLAY CHAPMAN IWAMURA PULICE & NERVELL

SCOTT I. BATTERMAN 5017  
Topa Financial Center  
700 Bishop Street, Suite 2100  
Honolulu, Hawaii 96813  
Telephone: (808) 535-8400  
Facsimile: (808) 535-8444  
E-mail: sib@paclawteam.com

Specially Appearing Counsel for  
ANDERS G.O. NERVELL

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

HAWAIIAN KINGDOM [*sic*],

Plaintiff,

vs.

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

Defendants.

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

REPLY MEMORANDUM IN FURTHER  
SUPPORT OF MOTION TO DISMISS  
AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF  
AS TO ANDERS G.O. NERVELL

REPLY MEMORANDUM IN FURTHER SUPPORT OF MOTION  
TO DISMISS AMENDED COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AS TO ANDERS G.O. NERVELL

I. PLAINTIFF HAS NO STANDING TO OBJECT TO DISMISSAL  
BECAUSE PLAINTIFF DOES NOT EXIST AS A RECOGNIZED ENTITY

Plaintiff's opposition is based entirely on the continuing existence of the Kingdom of Hawaii. However, this Court is bound by controlling Ninth Circuit Law that no such entity exists. United States v. Lorenzo, 995 F.2d 1448, 1456 (9th

(CERTIFICATE OF SERVICE ATTACHED)

Cir. 1993) ("The appellants have presented no evidence that the Sovereign Kingdom of Hawaii is currently recognized by the federal government").

See also State v. French, 77 Haw. 222, 228, 883 P.2d 644, 650 (Ct. App. 1994)("[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." (internal quotation marks, brackets, and citation omitted)); Megeso-William-Alan v. Ige, No. 21-00011 SOM-RT, 2021 U.S. Dist. LEXIS 91037, at \*33 n.18 (D. Haw. May 12, 2021); Waikiki v. Trump, No. 20-00308 JAO-RT, 2020 U.S. Dist. LEXIS 133798, at \*4-5 (D. Haw. July 28, 2020); Penaflo v. United States, No. 18-00458 JAO-KJM, 2018 U.S. Dist. LEXIS 207382, at \*4-5 (D. Haw. Dec. 7, 2018); Mo'i Kapu v. AG, No. 17-00213 DKW-RLP, 2017 U.S. Dist. LEXIS 73469, at \*9 (D. Haw. May 15, 2017) ("invocation of the Hawaiian Kingdom or international law, or his understanding of criminal law, does not affect the legitimacy of the United States or this district court"); Hawaiian Kingdom v. United States, No. 11-00657 DAE KSC, 2012 U.S. Dist. LEXIS 24769, at \*10 -11(D. Haw. Feb. 24, 2012)("the Ninth Circuit, this Court, and Hawaii state courts have all rejected this contention and held that the laws of the United States and the State of Hawaii apply to all individuals in this State"); Villanueva v. Hawaii, No. 05-00721 HG-BMK, 2005 U.S. Dist. LEXIS 49280, at \*4-5 (D. Haw. Dec. 8, 2005)("Hawaii was admitted to the Union in 1959 and is clearly one of the United States of America

. . . the Kingdom of Hawaii is [not] currently recognized by the federal government  
... The Hawaii courts have . . . [found] that the Kingdom of Hawaii is not recognized  
as a sovereign state by either the federal government or by the State of Hawaii.”)

This very Court reached precisely the same conclusion in an opinion  
issued two years ago, Keliuhuluhulu v. Keanaaina, No. 19-00417 LEK-WRP, 2019  
U.S. Dist. LEXIS 158306, at \*8 (D. Haw. Sep. 17, 2019)(emphasis added)

Plaintiff apparently asserts that, as a chief of the  
Kingdom of the Hawaiian Islands, he is an alien for  
purposes of § 1350 and a "citizen[] or subject[] of a foreign  
state" for purposes of § 1332(a)(2). However, **the  
Kingdom of Hawai'i is not a sovereign, foreign state.**

As stated by the Hawai'i Intermediate Court of  
Appeals ("ICA"), a statement that is as true now as  
it was when the ICA stated it in 1994, "presently  
there is no factual (or legal) basis for concluding  
that the [Hawaiian] Kingdom exists as a state in  
accordance with recognized attributes of a state's  
sovereign nature." Hawaii v. French, 77 Haw. 222,  
228, 883 P.2d 644, 650 (Ct. App. 1994) (quotations  
omitted).

U.S. Bank Tr., N.A. for LSF8 Master Participation Tr. v.  
Fonoti, Civil No. 18-00118 SOM-KJM, 2018 U.S. Dist.  
LEXIS 119103, 2018 WL 3433295, at \*10 (D. Hawai'i  
June 29, 2018) (alteration in Fonoti), report and  
recommendation adopted, 2018 U.S. Dist. LEXIS 119945,  
2018 WL 3431923 (July 16, 2018).

Nothing has transpired in the past two years to alter the conclusion of  
this Court, or to otherwise bring the Kingdom of Hawaii back into existence.

Accordingly, the opposition is without any basis, and the Motion to Dismiss should be granted.

II. THIS COURT IS BOUND BY TREATY TO DISMISS THIS ACTION

The Federal Courts are a branch of the Federal Government, created by the United States Constitution as part of that Government. They are as bound by the laws of the United States, including treaties ratified by the United States Congress, as any other branch of the government. See, e.g., 767 Third Ave. Assocs. v. Permanent Mission of Zaire to UN, 988 F.2d 295, 297 (2d Cir. 1993): “Applicable treaties [are] binding upon federal courts to the same extent as domestic statutes.” Thus, this Court is bound by the decision of the Executive Branch of the United States of America, ratified by the Legislative Branch of the United States of America, to enter into an agreement according diplomatic immunity to Mr. Nervell.

Tendentious ramblings regarding international law can play no role here. “[I]t has long been settled in the United States that the federal courts are bound to recognize [an applicable treaty, statute, or constitutional provision] as superior to canons of international law.” Comm. of U.S. Citizens Living in Nicaragua v. Reagan, 859 F.2d 929, 939 (D.C. Cir. 1988)(citation omitted). Customary international law is United States law "where there is **no treaty**, and no controlling executive or legislative act or judicial decision." United States v. Yousef, 327 F.3d 56, 92 (2d Cir.

2003) (emphasis modified) (quoting *The Paquete Habana*, 175 U.S. 677, 700, 20 S. Ct. 290, 44 L. Ed. 320 (1900)).

In this case, there is such a treaty, the Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 78, T.I.A.S. No. 6820 (hereinafter “Consular Convention”). That treaty is binding on this Court, as an organ of the United States Government, and accordingly this Court lacks jurisdiction over Mr. Nervell. Accord *Foxgord v. Hischemoeller*, 820 F.2d 1030, 1033 (9th Cir. 1987)(emphasis added):

Honorary consuls who are nationals or permanent residents of the receiving state, such as Hischemoeller, possess very few privileges and immunities. See Consular Convention, *supra*, art. 71(1); Lee, *supra*, at 163. For example, **they enjoy . . . "immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions. . . ."** Consular Convention, *supra*, art. 71(1).

Accordingly, the Amended Complaint herein should be dismissed with prejudice as against Mr. Nervell, as this Court lacks jurisdiction over his person with respect to any claim asserted therein.

DATED: Honolulu, Hawaii, October 19, 2021.

/s/ Scott I. Batterman  
SCOTT I. BATTERMAN  
Specially Appearing Attorney for  
ANDERS G.O. NERVELL