

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI‘I**

HAWAIIAN KINGDOM,

*Plaintiff,*

v.

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

*Defendants.*

MOTION FOR LEAVE TO FILE  
LETTER SUPPLEMENT TO  
AMENDED *AMICUS CURIAE* BRIEF

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

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**MOTION FOR LEAVE TO FILE LETTER SUPPLEMENT TO AMENDED  
*AMICUS CURIAE* BRIEF**

Counsel for *amici curiae* Water Protector Legal Collective, International Association for Democratic Lawyers, and the National Lawyers Guild respectfully move this Court for leave to supplement their amended *amicus curiae* brief in support of Plaintiff, the Hawaiian Kingdom’s Amended Complaint. In support of this motion, the movants state:

1. A court may, on just terms, permit supplementation of a pleading setting out any transaction, occurrence, or event that happened after the date of the original pleading. F.R.C.P. 15(d). Leave to supplement should be freely given in the absence of undue delay or undue prejudice. *See San Luis & Delta-Mendota Water Auth. v. U.S. Dep't of Interior*, 236 F.R.D. 491, 496 (E.D. Cal. 2006) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). This rule and caselaw comport with this Court’s Order Granting Motion to File Amended Amicus Curiae Brief [ECF [90]], stating that “the amicus may not make any additional filings without leave of court.”

3. Movants wish to supplement their *amicus* brief with a letter, dated February 16, 2022, from two international organizations with special consultative status with the U.N. Economic and Social Council and accredited before the Human Rights Council—the International Association of Democratic Lawyers and the

American Association of Jurists—which was sent to all Permanent Missions to the United Nations in New York City and Geneva, Switzerland. The letter addresses the ongoing illegal occupation of Hawai‘i under international law and will be presented before the United Nations Human Rights Council at its 49<sup>th</sup> session in Geneva beginning on February 28, 2022.

4. This letter was written after *amici* filed their brief, in contemplation of a United Nations meeting that also will occur after *amici* filed their brief. This motion promptly follows the letter, so there is no undue delay. The letter addresses the same issues as the *amicus* brief—namely, the international law violations caused by the illegal occupation of Hawai‘i. Therefore, there is no undue prejudice, nor are *amici* asking to create, extend, or enlarge the issues in this case. *Cf. Miller-Wohl Co., Inc. v. Comm'r of Lab. & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982) (citation omitted). The letter is provided for informational purposes to the Court and to provide additional context for the urgent and serious issues raised by this case, which are also the current subject of discussion in international forums.

WHEREFORE, we respectfully move the Court for leave to supplement the amended *amicus* brief with the aforementioned letter attached hereto as Exhibit A.

Dated: February 24, 2022

Respectfully submitted,

/s/ Natali Segovia

/s/ Charles M. Heaukulani

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **Motion for Leave to File Letter Supplement to Amended *Amicus Curiae* Brief** with the Clerk of the Court for the United States District Court for the District of Hawai‘i by using the CM/ECF system on February 24, 2022.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: February 24, 2022

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Counsel for *Amici Curiae*



Dear Ambassador,

The International Association of Democratic Lawyers (IADL) and the American Association of Jurists—Asociación Americana de Juristas (AAJ) would like to bring to your attention the prolonged and illegal belligerent occupation of the Hawaiian Kingdom by the United States of America since 17 January 1893. Both the IADL and the AAJ, as non-governmental organizations, have special consultative status with the United Nations Economic and Social Council and are accredited to participate in the Human Rights Council's sessions as Observers.

The IADL and the AAJ strongly condemns the January 1893 invasion of the Hawaiian Kingdom by the United States and its subsequent unlawful and prolonged occupation to date, a clear violation of customary international law at the time, which is currently set out in Article 2(4) of the Charter of the United Nations prohibiting the use of force. The IADL and the AAJ have always been a proponent of the rule of law and a State's obligation to comply with international humanitarian law, which includes the law of occupation.

In 2001, the Permanent Court of Arbitration, in *Larsen v. Hawaiian Kingdom*, stated “in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties.”<sup>1</sup> The Hawaiian Kingdom currently has treaties with Austria, Belgium, Bremen, Denmark, France, Germany, Great Britain, Hamburg, Hungary, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Russia, Spain, Sweden, Switzerland and the United States.<sup>2</sup> The Hawaiian Kingdom also became a member of the Universal Postal Union on 1 January 1882.

In its Annual Reports of 2000-2011,<sup>3</sup> the Permanent Court of Arbitration's (PCA) Administrative Council acknowledged the continuity of the Hawaiian Kingdom as a State, which is a non-Contracting Power to the 1907 Hague Convention for the Pacific Settlement of International Disputes, and thereby has access to the jurisdiction of the Permanent Court in accordance with Article 47. There are 122 Contracting Powers to the 1907 Convention, whereby 120 of these States are Member States of the United Nations, and all were aware of the Hawaiian Kingdom's status as a State by virtue of these Annual Reports. In its case repository, the

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<sup>1</sup> *Larsen v. Hawaiian Kingdom*, 119 *Int'l L. Reports* 566, 581 (2001). Case description for the *Larsen* case online at <https://pca-cpa.org/en/cases/35/>.

<sup>2</sup> Treaties with Foreign States, in *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, ed. David Keanu Sai 236-310 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian\\_Royal\\_Commission\\_of\\_Inquiry\\_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

<sup>3</sup> *Annual Reports*, Permanent Court of Arbitration (online at <https://pca-cpa.org/en/about/annual-reports/>).

Permanent Court of Arbitration acknowledges the Hawaiian Kingdom as a State, and the Council of Regency as its restored government.<sup>4</sup>

Through the legal lens of the civil law tradition, the action taken by the International Bureau of the PCA acknowledging the Hawaiian Kingdom as a non-Contracting State is a “juridical act” that stemmed from the “juridical fact” of the Hawaiian Kingdom’s continued existence as a State since the nineteenth century. On this matter see Professor Federico Lenzerini’s memorandum “Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration,”<sup>5</sup> and his “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,”<sup>6</sup> that were filed with the United States District Court for the District of Hawai‘i in *Hawaiian Kingdom v. Biden, et al.*, civil no. 1:21-cv-00243-LEK-RT.

After completing an investigation into the United States role in the overthrow of the Hawaiian Kingdom government on 17 January 1893, President Cleveland apprised the Congress of his findings and conclusions. In his message to the Congress, he stated, “And so it happened that on the 16th day of January, 1893, between four and five o’clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies. This military demonstration upon the soil of Honolulu was of itself an act of war.”<sup>7</sup> The President concluded, that “the military occupation of Honolulu by the United States on the day mentioned was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property.”<sup>8</sup>

This invasion coerced Queen Lili‘uokalani, Executive Monarch of the Hawaiian Kingdom, to conditionally surrender to the superior power of the United States military, where she stated, “Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.” The President acknowledged that by “an act of war...the Government of a...friendly and confiding people has been overthrown.”<sup>9</sup>

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<sup>4</sup> *Larsen v. Hawaiian Kingdom*, PCA Case Repository, PCA Case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>).

<sup>5</sup> “Plaintiff Hawaiian Kingdom’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; Declaration of Professor Federico Lenzerini,” *Hawaiian Kingdom v. Biden et al.*, Civil No. 1:21-cv-00243-LEK-RT, United States District Court for the District of Hawai‘i (online at [https://hawaiiankingdom.org/pdf/%5BECF%20174%5D%20HK%20Request%20for%20Judicial%20Notice%20\(Filed%202021-12-06\).pdf](https://hawaiiankingdom.org/pdf/%5BECF%20174%5D%20HK%20Request%20for%20Judicial%20Notice%20(Filed%202021-12-06).pdf)).

<sup>6</sup> “Declaration of Professor Federico Lenzerini,” *Hawaiian Kingdom v. Biden et al.*, Civil No. 1:21-cv-00243-LEK-RT, United States District Court for the District of Hawai‘i (online at [https://hawaiiankingdom.org/pdf/\[ECF55-2\] Declaration of Prof. Federico Lenzerini \(Filed%202021-08-11\).pdf](https://hawaiiankingdom.org/pdf/[ECF55-2] Declaration of Prof. Federico Lenzerini (Filed%202021-08-11).pdf)).

<sup>7</sup> President Cleveland’s Message to the Congress 451 (18 December 1893) (online at [https://hawaiiankingdom.org/pdf/Cleveland's Message \(12.18.1893\).pdf](https://hawaiiankingdom.org/pdf/Cleveland's%20Message%20(12.18.1893).pdf)).

<sup>8</sup> *Id.*, 452.

<sup>9</sup> *Id.*, 456.

Through executive mediation between the Queen and the new U.S. Minister to the Hawaiian Islands, Albert Willis, that lasted from 13 November 1893, through 18 December 1893, an agreement of peace was reached.<sup>10</sup> According to the executive agreement, by exchange of notes, the President committed to restoring the Queen as the Executive Monarch, and the Queen agreed, after being restored, to grant a full pardon to the insurgents. Political wrangling in the Congress, however, blocked President Cleveland from carrying out his obligation of restoration of the Queen.

Five years later, at the height of the Spanish-American War, President Cleveland's successor, William McKinley, signed a congressional joint resolution of annexation on 7 July 1898, unilaterally seizing the Hawaiian Islands for military purposes. In the *Lotus* case, the Permanent Court of International Justice stated that "the first and foremost restriction imposed by international law upon a State is that...it may not exercise its power in any form in the territory of another State."<sup>11</sup>

This rule of international law was acknowledged by the Supreme Court in *United States v. Curtiss-Wright, Corp.* (1936), when the court stated, "Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law."<sup>12</sup> In 1988, the U.S. Department of Justice's Office of Legal Counsel concluded, it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution."<sup>13</sup>

Under international law, "a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State."<sup>14</sup>

Despite the limitations of United States legislation, the Congress went ahead and enacted the Territorial Act (1900) changing the name of the governmental infrastructure to the Territory of Hawai'i.<sup>15</sup> Fifty-nine years later, the Congress changed the name of the Territory of Hawai'i to the State of Hawai'i in 1959 under the Statehood Act.<sup>16</sup> The governmental infrastructure of the Hawaiian Kingdom continued as the governmental infrastructure of the State of Hawai'i.

On 25 February 2018, United Nations Independent Expert, Dr. Alfred M. deZayas, in his communication with members of the State of Hawai'i Judiciary wrote, "I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such,

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<sup>10</sup> Executive Agreement, by exchange of notes, between President Cleveland and Queen Lili'uokalani (18 December 1893) (online at [https://hawaiiankingdom.org/pdf/EA\\_2\(HI%20Claim\).pdf](https://hawaiiankingdom.org/pdf/EA_2(HI%20Claim).pdf)).

<sup>11</sup> *Lotus*, PCIJ Series A, No. 10, 18 (1927).

<sup>12</sup> *United States v. Curtiss-Wright, Corp.*, 299 U.S. 304, 318 (1936).

<sup>13</sup> Douglas W. Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea," 12 *Op. O.L.C.* 238, 252 (1988) (online at [https://hawaiiankingdom.org/pdf/1988\\_Opinion\\_OLC.pdf](https://hawaiiankingdom.org/pdf/1988_Opinion_OLC.pdf)).

<sup>14</sup> Krystyna Marek, *Identity and Continuity of State in Public International Law* 110 (2nd ed., 1968).

<sup>15</sup> *An Act To provide a government for the Territory of Hawaii*, 31 Stat. 141 (1900).

<sup>16</sup> *An Act To provide for the admission of the State of Hawaii into the Union*, 73 Stat. 4 (1959).



international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the laws of the occupier (the United States).”<sup>17</sup>

The IADL and the AAJ fully supports the National Lawyers Guild’s 2019 resolution that “calls upon the United States of America immediately to begin to comply with international humanitarian law in its prolonged and illegal occupation of the Hawaiian Islands.”<sup>18</sup> Together with the National Lawyers Guild (NLG):

- IADL and the AAJ strongly condemns the prolonged and illegal occupation of the Hawaiian Islands.
- IADL and the AAJ also condemns the unlawful presence and maintenance of the United States Indo-Pacific Command with its 118 military sites throughout the Hawaiian Islands.
- IADL and the AAJ calls for the United States to immediately comply with international humanitarian law and begin to administer the laws of the Hawaiian Kingdom as the occupied State.
- IADL and the AAJ calls on the legal and human rights community to view the United States presence in the Hawaiian Islands through the prism of international law and to roundly condemn it as an illegal occupation under international law.
- IADL and the AAJ supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.
- IADL and the AAJ calls on all United Nations member States and non-member States to not recognize as lawful a situation created by a serious violation of international law, and to not render aid or assistance in maintaining the unlawful situation. As an internationally wrongful act, all States shall cooperate to ensure the United States complies with international humanitarian law and consequently bring to an end the unlawful occupation of the Hawaiian Islands.

The IADL and the AAJ recognizes that the United States’ violations of international humanitarian law have led to the commission of war crimes and human rights violations in the Hawaiian Islands. Professor William Schabas addresses the war crimes being committed in the Hawaiian Islands,<sup>19</sup> and Professor Federico Lenzerini addresses the human rights violations.<sup>20</sup>

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<sup>17</sup> Letter from U.N. Independent Expert Dr. deZayas to Members of the Judiciary of the State of Hawai‘i (25 Feb. 2018) (online at [https://hawaiiankingdom.org/pdf/Dr\\_deZayas\\_Memo\\_2\\_25\\_2018.pdf](https://hawaiiankingdom.org/pdf/Dr_deZayas_Memo_2_25_2018.pdf)).

<sup>18</sup> NLG Calls Upon US to Immediately Comply with International Humanitarian Law in its Illegal Occupation of the Hawaiian Islands (January 13, 2020) (online at <https://www.nlg.org/nlg-calls-upon-us-to-immediately-comply-with-international-humanitarian-law-in-its-illegal-occupation-of-the-hawaiian-islands/>).

<sup>19</sup> William Schabas, “War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom,” in *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, ed. David Keanu Sai 151-169 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian\\_Royal\\_Commission\\_of\\_Inquiry\\_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

<sup>20</sup> Federico Lenzerini, “International Human Rights Law and Self-Determination of Peoples Related to the United States Occupation of the Hawaiian Kingdom,” in *The Royal Commission of Inquiry: Investigating War Crimes and*

The IADL and the AAJ also recognizes that the civilian population in the Hawaiian Islands are “protected persons” and their rights during a belligerent occupation are vested in the 1949 Fourth Geneva Convention and the 1977 Additional Protocol.

For the restoration of international law and the tenets of the UN Charter, the IADL and the AAJ calls upon the United States to immediately comply with international humanitarian law and the law of occupation in its prolonged and illegal occupation of the Hawaiian Islands.

The IADL and the AAJ fully supports the NLG’s 10 November 2020 letter to State of Hawai‘i Governor David Ige urging him to “proclaim the transformation of the State of Hawai‘i and its Counties into an occupying government pursuant to the Council of Regency’s proclamation of June 3, 2019, in order to administer the laws of the Hawaiian Kingdom. This would include carrying into effect the Council of Regency’s proclamation of October 10, 2014, that bring the laws of the Hawaiian Kingdom in the nineteenth century up to date.”<sup>21</sup>

We urge all UN Member States to comply with the *Articles of State Responsibility for Internationally Wrongful Acts* (2001).<sup>22</sup> The U.S. violation of the Hawaiian Kingdom’s sovereignty and its failure to comply with international humanitarian law for over a century is an internationally wrongful act. As such, UN Member States have an obligation to not “recognize as lawful a situation created by a serious breach...nor render aid or assistance in maintaining that situation,”<sup>23</sup> and member States “shall cooperate to bring to an end through lawful means any serious breach [by a member State of an obligation arising under a peremptory norm of general international law].”<sup>24</sup>

Sincerely,

International Association of Democratic Lawyers

American Association of Jurists—Asociación Americana de Juristas

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*Human Rights Violations Committed in the Hawaiian Kingdom*, ed. David Keanu Sai 151-169 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian\\_Royal\\_Commission\\_of\\_Inquiry\\_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

<sup>21</sup> NLG letter urges implementation on international law in U.S.-occupied Hawaiian Kingdom (2020) (online at <https://nlginternational.org/2020/11/nlg-letter-urges-implementation-of-international-law-in-u-s-occupied-hawaiian-kingdom/>).

<sup>22</sup> United Nations, Responsibility of States for Internationally Wrongful Acts (2001) (online at [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf)).

<sup>23</sup> *Id.*, Article 41(2).

<sup>24</sup> *Id.*, Article 41(1).