

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 15 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOA KANEALII,

Plaintiff-Appellant,

RYAN MANARA,

Proposed Intervenor-Plaintiff -
Appellant,

v.

TYLER C. SAITO, et. al.,

Defendants - Appellees.

No. 25-728

No. 25-2062

D.C. No.

1:23-cv-00276-DKW-KJM

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Derrick Kahala Watson, District Judge, Presiding

Submitted May 29, 2026**

Before: RAWLINSON, FRIEDLAND, and VANDYKE, Circuit Judges.

Plaintiff-Appellant Noa Kanealii (Kanealii) appeals pro se the district court's

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

dismissal of his amended complaint for lack of subject matter jurisdiction. We have jurisdiction under 28 U.S.C. §1291. Reviewing de novo, we affirm. *See Stillaguamish Tribe v. Washington*, 913 F.3d 1116, 1118 (9th Cir. 2019).

Proposed Intervenor-Plaintiff-Appellant Ryan ManaRa (ManaRa) appeals pro se the district court's denial of his motion to intervene. Reviewing de novo the denial of a motion to intervene as of right, we affirm. *See United States v. State of Washington*, 86 F.3d 1499, 1503 (9th Cir. 1996).

1. "Congress has granted [district] courts jurisdiction over two main kinds of cases: federal question cases and diversity cases. . . ." *Tesla Motors, Inc. v. Balan*, 134 F.4th 558, 560 (9th Cir. 2025) (citation and internal quotation marks omitted). Federal question jurisdiction exists if the suit "arises under" federal law. *Id.* (citation omitted); *see also* 28 U.S.C. § 1331. Diversity jurisdiction attaches when "the suit [is] between citizens of different states, and the amount in controversy . . . exceed[s] \$75,000." *Tesla Motors*, 134 F.4th at 560 (quoting 28 U.S.C. § 1332(a)) (internal quotation marks omitted).

"Because Defendants bring a jurisdictional challenge solely on the basis of [Kanealii's] complaint, we do not look beyond the complaint to determine the district court's jurisdiction. We take as true the facts [he] alleges in his complaint and construe them in the light most favorable to him." *Husayn v. Mitchell*, 142 F.4th 667, 670 (9th Cir. 2025) (citation omitted).

Kanealii failed to respond to Defendant-Appellees' motion to dismiss for lack of subject matter jurisdiction, and the district court granted Defendants-Appellees' motion to dismiss because Kanealii alleged no valid basis for federal question jurisdiction or diversity jurisdiction. Specifically, the district court found that the amended complaint did not state a federal question under the: (1) Supremacy Clause of the United States Constitution; (2) 1849-50 Hawaiian Treaty with the United States; (3) 28 U.S.C. §1350 (Alien Tort Statute (ATS)); (4) 18 U.S.C. §1091 (Genocide Statute); (5) United Nations Convention on the Prevention and Punishment of the Crime of Genocide; or (6) United Nations Convention of the Law of the Sea. *See Bishop Paiute Tribe v. Inyo Cnty.*, 863 F.3d 1144, 1151 (9th Cir. 2017) (explaining that "federal question" jurisdiction exists "if the complaint, considered in its entirety, on its face . . . present[s] a federal question") (citation omitted).

The district court provided pro se Kanealii notice and an opportunity to amend the first amended complaint prior to dismissal. Rather than filing a second amended complaint, Kanealii elected to appeal. On appeal, Kanealii argues that he is not American for purposes of the ATS because he is a Hawaiian national of the Hawaiian Islands. "The ATS grants to the district courts original jurisdiction of any civil action by [a noncitizen] for a tort only, committed in violation of the law of nations or a treaty of the United States." *Serra v. Lappin*, 600 F.3d 1191, 1197–

98 (9th Cir. 2010) (citation and internal quotation marks omitted). Kanealii's argument that he is a citizen of a foreign sovereign nation is foreclosed by our precedent. *See United States v. Lorenzo*, 995 F.2d 1448, 1456 (9th Cir. 1993) (noting that Hawaii is not a sovereign nation). Because Kanealii is an American citizen and not a citizen of a foreign sovereign nation, the district court committed no error in concluding that it lacked subject-matter jurisdiction over his ATS claim. *See Serra*, 600 F.3d at 1198, 1200.

The district court did not abuse its discretion in dismissing the complaint without prejudice because the amended complaint was insufficient to establish subject matter jurisdiction. *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).

2. ManaRa asserts that the district court erred by denying his motion to intervene as of right under Rule 24(a)(2) of the Federal Rules of Civil Procedure. However, the district court correctly denied his motion to intervene because it lacked subject-matter jurisdiction, which terminated the proceeding, leaving no case or controversy in which ManaRa could intervene. *See Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 69 F.4th 588, 593 (9th Cir. 2023).

AFFIRMED.¹

¹ The motions for miscellaneous relief (Dkt. Nos. #9, #10) are denied as moot.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

NOA KANEALII IO PONO I KELII UA
MAU,

Plaintiff,

v.

TYLER C. SAITO, *et al.*,

Defendants.

Case No. 23-cv-00276-DKW-KJM

**ORDER (1) GRANTING IN PART
CERTAIN MOTIONS TO DISMISS
AND MOTIONS FOR JOINDER, (2)
DENYING PLAINTIFF'S MOTION
TO STRIKE, AND (3) DISMISSING
THE COMPLAINT WITH LEAVE
TO AMEND**

In October 2023, Plaintiff Noa Kanealii Io Pono I Kelii Ua Mau (Plaintiff), proceeding without counsel, filed an Amended Complaint. Dkt. No. 14. Therein, Plaintiff named at least 26 Defendants (collectively, Defendants), ranging from private to governmental individuals and entities, and appearing to allege that one of the Defendants, Hiro Shimada, "unlawfully detained" and "forcefully removed" Plaintiff from his "private kuleana property" on Kaua'i, Hawai'i. Various Defendants, including the United States of America, the Attorney General for the State of Hawai'i Anne Lopez, and Kalalea Plantation LLC, have moved to dismiss the Amended Complaint on numerous grounds, including a lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and failure to state a

claim under Rule 12(b)(6). Dkt. Nos. 20, 30-34, 55, 113. Other Defendants have moved to join in certain of the foregoing motions to dismiss. Dkt. Nos. 85, 123.

Having reviewed the parties' briefing, at this preliminary juncture of the proceeding, the Court addresses only Defendants' argument concerning an alleged lack of subject matter jurisdiction. Specifically, the Court agrees with Defendants that the alleged bases for jurisdiction in the Amended Complaint provide no such thing, and, thus, certain of the motions to dismiss and motions for joinder are GRANTED in that respect. However, in light of Plaintiff's pro se status, and the fact that this is the first notice provided of the jurisdictional deficiency in the Amended Complaint, dismissal is WITH LEAVE TO AMEND to the extent set forth below.

BACKGROUND

Plaintiff initiated this case on July 3, 2023. Dkt. No. 1. Roughly three months later, on October 11, 2023, Plaintiff filed an Amended Complaint. Dkt. No. 14.¹ The Amended Complaint appears to name at least 26 Defendants. Nonetheless, the only meaningful factual allegation therein concerns just one Defendant, Hiro Shimada (Shimada). Specifically, Plaintiff alleges that, on

¹Because the Amended Complaint was filed prior to the service of any pleading responsive to the Complaint, the Court construes the Amended Complaint as consistent with the amendment of pleadings under Federal Rule of Civil Procedure 15(a)(1)(B).

August 25th of an unidentified year, Shimada, with a gun, “unlawfully detained and forcefully removed” him from his “private kuleana property” on Kaua‘i, Hawai‘i. *Id.* at ¶ 28. The remaining allegations conclusorily contend that numerous individual Defendants “coordinated” with or are “employed” or “contracted” by various other Defendants, including the United States of America, the State of Hawai‘i, and Kalalea Plantation LLC (Kalalea). *See id.* Further, according to the Amended Complaint, the purpose of the alleged “coordinat[ion]” is to pursue a “campaign of Genocide aimed at...the ethnic national group ‘Hawaiian.’” *Id.*

On January 19, 2024, Defendants Kalalea and Benjamin Garfinkle (Garfinkle) filed the first motion to dismiss, arguing, among other things, that the Court lacks subject matter jurisdiction and the Amended Complaint fails to state a claim for relief. Dkt. No. 20. Plaintiff responded to Kalalea and Garfinkle’s motion to dismiss with a motion to strike. Dkt. No. 26. Therein, Plaintiff argues that the motion to dismiss should be stricken because Kalalea and Garfinkle failed to comply with Local Rule 7.8’s pre-filing conferral requirement. The motion to strike, though, does not otherwise respond to the arguments for dismissal raised by Kalalea and Garfinkle.

On March 12, 2024, Defendants Mathew Bracken, Todd Raybuck, Shimada, and Tyler Saito each filed separate motions to dismiss, Dkt. Nos. 30-33, with each arguing solely that the Complaint failed to state a claim against them under Rule 12(b)(6). As of this date, Plaintiff has not responded to any of the four motions to dismiss identified in this paragraph.

Also on March 12, 2024, Defendants Anne Lopez (Lopez), the Attorney General of the State of Hawai'i, and Sylvia Luke (Luke), the Lieutenant Governor of the State of Hawai'i, moved to dismiss the Amended Complaint, arguing, among other things, that the Court lacks subject matter jurisdiction, Eleventh Amendment immunity, and the failure to state a claim. Dkt. No. 34. Subsequently, Defendants Michael Soong (Soong) and Mark Recktenwald (Recktenwald), the Chief Justice of the Hawai'i Supreme Court, moved to join in Lopez and Luke's motion to dismiss. Dkt. No. 85. Plaintiff has not responded to either Lopez and Luke's motion to dismiss or the motion to join in the same.

On March 21, 2024, Defendants, the United States of America, the "US Federal Government," and the U.S. Department of Justice, moved to dismiss the Amended Complaint, arguing, among other things, that they are entitled to sovereign immunity, the Court lacks subject matter jurisdiction, and the failure to state a claim. Dkt. No. 55. Subsequently, Defendants, Joseph Biden, the U.S.

President, Merrick Garland, the U.S. Attorney General, the U.S. Department of State, Anthony Blinken, the U.S. Secretary of State, the Federal Bureau of Investigation (FBI), Christopher Wray, the Director of the FBI, and Robert King (collectively, with the United States of America, the “US Federal Government,” and the U.S. Department of Justice, the “United States of America”), moved to join in the motion to dismiss identified in this paragraph. Dkt. No. 123. Plaintiff has not responded to either the United States of America’s motion to dismiss or the motion to join in the same.

On April 3, 2024, Defendant, the State of Hawai‘i, moved to dismiss the Amended Complaint, arguing, among other things, that the Court lacks subject matter jurisdiction, Eleventh Amendment immunity, and the failure to state a claim. Dkt. No. 113. Plaintiff has also not responded to the State of Hawai‘i’s motion to dismiss.

Finally, on April 9, 2024, Ryan ManaRa (ManaRa), a non-party to this action, moved to intervene as a plaintiff, asserting that he has an “interest relating to the property and transaction which is the subject of this action....” Dkt. No. 121. Defendants, the United States of America, Kalalea, Garfinkle, Lopez, Luke,

Soong, and Recktenwald, have filed oppositions to the motion to intervene. Dkt.

Nos. 130-133.² ManaRa did not reply to any of the foregoing oppositions.

With the time for additional briefing long since over, this Order now follows.

STANDARDS OF REVIEW

Pursuant to Federal Rule of Civil Procedure 12(b)(1), a defendant may move for dismissal due to a lack of subject matter jurisdiction. When a defendant does so, “the plaintiff has the burden of proving jurisdiction in order to survive the motion.” *Kingman Reef Atoll Investments, LLC v. United States*, 541 F.3d 1189, 1197 (9th Cir. 2008) (quotation omitted).³

A defendant may also move for dismissal under Federal Rule of Civil Procedure 12(b)(6). To survive such a motion, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible

²Meanwhile, Defendants Saito, Bracken, Shimada, and Raybuck have filed statements of no position with respect to the motion to intervene. Dkt. Nos. 126-129.

³A Rule 12(b)(1) motion can consist of a facial or factual attack on jurisdiction. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Here, to the extent any Defendant moves for dismissal under Rule 12(b)(1), they appear to raise a facial attack, given that the challenge is to the sufficiency of the allegations in the Complaint. *See id.* (“In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction.”).

on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Because Plaintiff is proceeding without counsel, “[u]nless it is absolutely clear that no amendment can cure the defect . . . a pro se litigant is entitled to notice of the complaint’s deficiencies and an opportunity to amend prior to dismissal of the action.” *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). A court, however, may deny leave to amend where, among other things, amendment would be futile. *E.g., Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009); *Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d 522, 532 (9th Cir. 2008).

DISCUSSION

As detailed above, the Defendants, collectively, move for dismissal on various distinct grounds. Because one of those grounds relates to the Court’s subject matter jurisdiction to hear this case, the Court addresses the same first.

Defendants, the United States of America, the State of Hawai’i, Lopez, Luke, Kalalea, and Garfinkle (collectively, Moving Defendants), argue that the Court lacks subject matter jurisdiction because there is neither federal question nor diversity jurisdiction. Based, in part, on Plaintiff’s failure to respond to this

argument, and the purported federal questions cited in the Amended Complaint, the Court agrees.

Initially, as mentioned earlier, Plaintiff has not responded to any of the substantive grounds for dismissal raised in any of the pending motions to dismiss.⁴ Nonetheless, because Plaintiff is proceeding without counsel, the Court liberally construes the Amended Complaint. *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987). In doing so, though, the Court cannot act as counsel for a pro se litigant, such as by supplying the essential elements of a claim. *Pliler v. Ford*, 542 U.S. 225, 231 (2004); *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

Here, the Amended Complaint relies upon purported federal questions arising under the following six potential sources: (1) the Supremacy Clause of the U.S. Constitution; (2) the 1849-1850 Hawaiian Treaty with the United States; (3) 28 U.S.C. Section 1350; (4) 18 U.S.C. Section 1091; (5) the UN Convention on the Prevention and Punishment of the Crime of Genocide; and (6) the UN Convention on the Law of the Seas. Dkt. No. 14 at ¶ 1. None of these, however, is a source

⁴Instead, Plaintiff moved to strike the first motion to dismiss on the procedural ground that it failed to comply with Local Rule 7.8. *See* Dkt. No. 26. The motion to strike is DENIED because, as Plaintiff (at least tacitly) acknowledges therein, a party need not comply with the conferral requirement of Local Rule 7.8 when, as here, the opposing party is proceeding pro se (*i.e.*, without counsel). *See id.* at 3 (citing Local Rule 7.8).

of subject matter jurisdiction in this case. *See Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 107 (1989) (stating that the Supremacy Clause “is not a source of any federal rights; it secures federal rights by according them priority whenever they come in conflict with state law.”) (quotations omitted);⁵ *Medellin v. Texas*, 552 U.S. 491, 506 n.3 (2008) (explaining that “the background presumption is that international agreements...generally do not create rights or provide for a private cause of action in domestic courts.”) (quotation omitted); Treaty With The Hawaiian Islands, Dec. 20, 1849, *reprinted in* 9 Stat. 977 (providing for no private right of action); 18 U.S.C. § 1092 (providing that Section 1091, which is also known as the Proxmire Act and/or the UN Convention on the Prevention and Punishment of Genocide, shall not be construed “as creating any substantive or procedural right enforceable by law by any party in any proceeding.”); *Tobar v. United States*, 639 F.3d 1191, 1196 (9th Cir. 2011) (stating that the UN Convention on the Law of the Seas has been signed, but not ratified); 28 U.S.C. § 1350 (providing that district courts shall have jurisdiction “of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”).⁶

⁵Here, Plaintiff alleges no conflict between federal rights and state law.

⁶Here, while Plaintiff contends that he is an “alien to the United States”, Dkt. No. 1 at 3, he acknowledges that he is not an alien to Hawai‘i, *see id.* Therefore, Plaintiff is not an alien for

As alleged, therefore, the Court lacks subject matter jurisdiction over the claims brought in the Amended Complaint.⁷ To that extent only, the Moving Defendants' motions to dismiss and motions for joinder are GRANTED.⁸ As mentioned, however, Plaintiff is proceeding without counsel and, as of this point, without notice from the Court of the jurisdictional defects associated with his claims. Further, while Plaintiff's pro se status alone may not be sufficient to warrant amendment, here, at least arguably, it is not absolutely clear that amendment could not cure this deficiency. For example, the Amended Complaint appears to allege that Plaintiff was "forcefully removed" from property on Kaua'i. Dkt. No. 14 at ¶ 28. Liberally construed, given that the foregoing may involve a deprivation of property, Plaintiff may be able to amend to assert a takings claim under the U.S. Constitution against one or more of the Defendants. In addition, in the Amended Complaint, it alleges that Shimada threatened Plaintiff with violence, "unlawfully detained" him, and "forcefully removed" him from his property. *Id.*

purposes of Section 1350. See P.L. 86-3 (Mar. 18, 1959), reprinted in 73 Stat. 4 (providing for the admission of Hawai'i into the United States).

⁷While Plaintiff does not rely upon diversity jurisdiction, the Court notes that, in light of the allegations of the Amended Complaint, he could not because Plaintiff and at least one of the many Defendants are residents of Hawai'i. See Dkt. No. 1 at ¶¶ 1-2; *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1043 (9th Cir. 2009) (explaining that "federal district courts have jurisdiction over suits for more than \$75,000 where the citizenship of each plaintiff is different from that of each defendant.").

⁸Specifically, the following motions to dismiss and motions for joinder are GRANTED on the ground that the Court lacks subject matter jurisdiction: Dkt. Nos. 20, 34, 55, 85, 113, 123.

As Shimada observes in his motion to dismiss, Dkt. No. 32-1 at 6-9, while these allegations alone are still far from stating an actionable claim, Plaintiff may be able to amend the same to assert a claim under 42 U.S.C. Section 1983. Therefore, the Court cannot say that Plaintiff is not entitled to leave to amend his claims in an attempt to allege subject matter jurisdiction over at least one of the Defendants.

At this preliminary juncture, no more need be determined. As a result, in all other respects, the pending motions to dismiss and motions for joinder are **DENIED WITHOUT PREJUDICE** to renewal should Plaintiff file a second amended complaint. In other words, at this time, the Court does not address Defendants' other arguments, such as immunity, for dismissal. Similarly, due to the dismissal of the Amended Complaint, the motion to intervene is also **DENIED WITHOUT PREJUDICE** to renewal should Plaintiff file a second amended complaint.

So it is clear, should Plaintiff choose to file a second amended complaint, he must write short, plain statements alleging: (1) the legal right he believes was violated; (2) the name of the defendant(s) who violated that right; (3) exactly what each defendant did or failed to do and when; (4) how the action or inaction of that defendant is connected to the violation of his right; and (5) what specific injury he suffered because of a defendant's conduct. In doing so, Plaintiff must invoke a

legal right that provides for a cause of action in this Court against the Defendant(s) to whom the claim is directed.

CONCLUSION

For the reasons set forth herein, the Moving Defendants' motions to dismiss and motions for joinder, Dkt. Nos. 20, 34, 55, 85, 113, 123, are GRANTED IN PART. In all other respects, the pending motions to dismiss and motions for joinder, Dkt. Nos. 20, 30-34, 55, 85, 113, 123, are DENIED WITHOUT PREJUDICE. The motion to intervene, Dkt. No. 121, is similarly DENIED WITHOUT PREJUDICE. The motion to strike, Dkt. No. 26, is DENIED.

The Amended Complaint is DISMISSED WITH LEAVE TO AMEND to the extent set forth herein. Plaintiff may have until **June 17, 2024** to file a second amended complaint. **Should Plaintiff fail to file a second amended complaint by June 17, 2024, this case will be dismissed for lack of subject matter jurisdiction without further notice.**

IT IS SO ORDERED.

Dated: June 3, 2024 at Honolulu, Hawai'i.




Derrick K. Watson
Chief United States District Judge

Noa Kancalii Ilo Pono I Kelii Ua Mau vs. Tyler Saito, et al; Civil No. 23-00276 DKW-KJM; **ORDER (1) GRANTING IN PART CERTAIN MOTIONS TO DISMISS AND MOTIONS FOR JOINDER, (2) DENYING PLAINTIFF'S MOTION TO STRIKE, AND (3) DISMISSING THE COMPLAINT WITH LEAVE TO AMEND**

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

NOA KANEALII IO PONO I KELII
UA MAU,

Plaintiff,

V.

TYLER C. SAITO, *et al.*,

Defendants.

JUDGMENT IN A CIVIL CASE

Case: CV 23-00276 DKW-KJM

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

January 2, 2025

At 5 o'clock and 05 min pm
LUCY H. CARRILLO, CLERK

- [] **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- [✓] **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

On January 2, 2025, the Court issued its Entering Order, ECF No. 153 (January 2, 2025 Order).

IT IS ORDERED AND ADJUDGED that this action is HEREBY DISMISSED without prejudice, pursuant to and in accordance with the January 2, 2025 Order, and the Entering Order, ECF No. 151, filed on December 9, 2024, and ECF No. 136, "Order (1) Granting in Part Certain Motions to Dismiss and Motions for Joinder, (2) Denying Plaintiff's Motion to Strike, and (3) Dismissing the Complaint with Leave to Amend," filed on June 3, 2024.

January 2, 2025

Date

LUCY H. CARRILLO

Clerk

/s/ LUCY H. CARRILLO by JI

(By) Deputy Clerk

APPENDIX D

Constitutional Treaty Statutory and Rule Provisions

United States Constitution Article III Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; and to Controversies to which the United States shall be a Party.

United States Constitution Article VI Clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.

28 U.S.C. Section 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. Section 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. Section 1350

The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

8 U.S.C. Section 1101(a)(3)

The term "alien" means any person not a citizen or national of the United States.

8 U.S.C. Section 1101(a)(22)

The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

8 U.S.C. Section 1405

A person born in Hawaii on or after August 12, 1898, and before April 30, 1900, is declared to be a citizen of the United States as of April 30, 1900. A person born in Hawaii on or after April 30, 1900, is a citizen of the United States at birth. A person who was a citizen of the Republic of Hawaii on August 12, 1898, is declared to be a citizen of the United States as of April 30, 1900.

Treaty Article I

There shall be perpetual peace and amity between the United States and the King of the Hawaiian Islands, his heirs and his successors.

Treaty Article XVI

The present treaty shall be in force from the date of the exchange of the ratifications, for the term of ten years, and further, until the end of twelve months after either of the contracting parties shall have given notice to the other of its intention to terminate the same, each of the said contracting parties reserving to itself the right of giving such notice at the end of the said term of ten years, or at any subsequent term.

Supreme Court Rule 13.1

Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case entered by a United States court of appeals is timely when filed within 90 days after entry of the judgment.

Supreme Court Rule 30.1

If the last day of a prescribed period is a Saturday, Sunday, federal legal holiday, or a day on which the Court building is closed by order, the period extends until the end of the next day that is not one of those days.

TREATY WITH THE HAWAIIAN ISLANDS,
DEC. 20, 1849.

Dec. 20, 1849.

— Ratifications
exchanged at
Honolulu Aug.
21, 1850.
Proclamation
made Nov. 9,
1850.

Preamble.

WHEREAS a treaty of friendship, commerce, and navigation, between the United States of America and his Majesty the King of the Hawaiian Islands, was concluded and signed at Washington, on the twentieth day of December, in the year of our Lord one thousand eight hundred and forty-nine, the original of which treaty is, word for word, as follows:—

The United States of America and his Majesty the King of the Hawaiian Islands, equally animated with the desire of maintaining the relations of good understanding which have hitherto so happily subsisted between their respective states, and consolidating the commercial intercourse between them, have agreed to enter into negotiations for the conclusion of a treaty of friendship, commerce, and navigation, for which purpose they have appointed plenipotentiaries, that is to say: The President of the United States of America, John M. Clayton, Secretary of State of the United States; and his Majesty the King of the Hawaiian Islands, James Jackson Jarves, accredited as his special commissioner to the government of the United States: who, after having exchanged their full powers, found in good and due form, have concluded and signed the following articles:—

ARTICLE I.

There shall be perpetual peace and amity between the United States and the King of the Hawaiian Islands, his heirs and his successors.

Peace and
amity.

ARTICLE II.

There shall be reciprocal liberty of commerce and navigation between the United States of America and the Hawaiian Islands. No duty of customs, or other impost, shall be charged upon any goods, the produce or manufacture of one country, upon importation from such country into the other, other or higher than the duty or impost charged upon goods of the same kind, the produce or manufacture of, or imported from, any other country; and the United States of America and his Majesty the King of the Hawaiian Islands do hereby engage, that the subjects or citizens of any other state shall not enjoy any favor, privilege, or immunity, whatever, in matters of commerce and navigation, which shall not also, at the same time, be extended to the subjects or citizens of the other contracting party, gratuitously, if the concession in favor of that other state shall have been gratuitous, and in return for a compensation, as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concession shall have been conditional.

Reciprocal
freedom of
trade."Most-favored
nation" stipulation.

ARTICLE III.

All articles, the produce or manufacture of either country, which can legally be imported into either country from the other, in ships of that other country, and thence coming, shall, when so imported, be subject to the same duties, and enjoy the same privileges, whether imported in ships of the one country, or in ships of the other; and in like manner, all goods which can legally be exported or re-exported

Same subject

from either country to the other, in ships of that other country, shall, when so exported or re-exported, be subject to the same duties, and be entitled to the same privileges, drawbacks, bounties, and allowances, whether exported in ships of the one country, or in ships of the other; and all goods and articles, of whatever description, not being of the produce or manufacture of the United States, which can be legally imported into the Sandwich Islands, shall, when so imported in vessels of the United States, pay no other or higher duties, imposts, or charges, than shall be payable upon the like goods and articles, when imported in the vessels of the most favored foreign nation, other than the nation of which the said goods and articles are the produce or manufacture.

ARTICLE IV.

Tonnage &c.
duties.

No duties of tonnage, harbor, lighthouses, pilotage, quarantine, or other similar duties, of whatever nature, or under whatever denomination, shall be imposed in either country upon the vessels of the other, in respect of voyages between the United States of America and the Hawaiian Islands, if laden, or in respect of any voyage, if in ballast, which shall not be equally imposed in the like cases on national vessels.

ARTICLE V.

Provisions of
this treaty not
to extend to
existing trade.

It is hereby declared, that the stipulations of the present treaty are not to be understood as applying to the navigation and carrying trade between one port and another, situated in the states of either contracting party, such navigation and trade being reserved exclusively to national vessels.

ARTICLE VI.

Privileges of
steam vessels
carrying mails.

Steam vessels of the United States, which may be employed by the government of the said States, in the carrying of their public mails across the Pacific Ocean, or from one port in that ocean to another, shall have free access to the ports of the Sandwich Islands, with the privilege of stopping therein to refit, to refresh, to land passengers and their baggage, and for the transaction of any business pertaining to the public mail service of the United States, and shall be subject in such ports to no duties of tonnage, harbor, lighthouse, quarantine, or other similar duties of whatever nature or under whatever denomination.

ARTICLE VII.

Privileges of
whale ships.

The whale ships of the United States shall have access to the ports of Hilo, Kealahou, and Hanalei, in the Sandwich Islands, for the purposes of refitment and refreshment, as well as to the ports of Honolulu and Lahaina, which only are ports of entry for all merchant vessels; and in all the above-named ports, they shall be permitted to trade or barter their supplies or goods, excepting spirituous liquors, to the amount of two hundred dollars *ad valorem* for each vessel, without paying any charge for tonnage or harbor dues of any description, or any duties or imposts whatever upon the goods or articles so traded or bartered. They shall also be permitted, with the like exemption from all charges for tonnage and harbor dues, further to trade or barter, with the same exception as to spirituous liquors, to the additional amount of one thousand dollars *ad valorem*, for each vessel, paying upon the additional goods and articles so traded and bartered, no other or higher duties than are payable on like goods and articles, when imported in the vessel and by the citizens or subjects of the most favored foreign nation. They shall also be permitted to pass from port to port of the Sandwich Islands, for the purpose of procuring refreshments, but they

shall not discharge their seamen or land their passengers in the said Islands, except at Lahaina and Honolulu; and in all the ports named in this article, the whale ships of the United States shall enjoy, in all respects whatsoever, all the rights, privileges, and immunities, which are enjoyed by, or shall be granted to, the whale ships of the most favored foreign nation. The like privilege of frequenting the three ports of the Sandwich Islands, above named in this article, not being ports of entry for merchant vessels, is also guaranteed to all the public armed vessels of the United States. But nothing in this article shall be construed as authorizing any vessel of the United States, having on board any disease usually regarded as requiring quarantine, to enter, during the continuance of such disease on board, any port of the Sandwich Islands, other than Lahaina or Honolulu.

ARTICLE VIII.

The contracting parties engage, in regard to the personal privileges, that the citizens of the United States of America shall enjoy in the dominions of his Majesty the King of the Hawaiian Islands, and the subjects of his said Majesty in the United States of America, that they shall have free and undoubted right to travel and to reside in the states of the two high contracting parties, subject to the same precautions of police which are practiced towards the subjects or citizens of the most favored nations. They shall be entitled to occupy dwellings and warehouses, and to dispose of their personal property of every kind and description, by sale, gift, exchange, will, or in any other way whatever, without the smallest hindrance or obstacle; and their heirs or representatives, being subjects or citizens of the other contracting party, shall succeed to their personal goods, whether by testament or *ab intestato*; and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at will, paying to the profit of the respective governments, such dues only as the inhabitants of the country wherein the said goods are, shall be subject to pay in like cases. And in case of the absence of the heir and representative, such care shall be taken of the said goods as would be taken of the goods of a native of the same country in like case, until the lawful owner may take measures for receiving them. And if a question should arise among several claimants as to which of them said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. Where, on the decease of any person holding real estate within the territories of one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all duties of detraction on the part of the government of the respective states. The citizens or subjects of the contracting parties shall not be obliged to pay, under any pretence whatever, any taxes or impositions other or greater than those which are paid, or may hereafter be paid, by the subjects or citizens of the most favored nations, in the respective states of the high contracting parties. They shall be exempt from all military service, whether by land or by sea; from forced loans; and from every extraordinary contribution not general and by law established. Their dwellings, warehouses, and all premises appertaining thereto, destined for the purposes of commerce or residence, shall be respected. No arbitrary search of, or visit to, their houses, and no arbitrary examination or inspection whatever of the books, papers, or accounts of their trade, shall be made; but such measures shall be executed only in conformity with the legal sentence of a competent tribunal; and

Privileges of citizens of U. S. in Hawaiian Islands, and the treaty.

Travel

Trade.

Heirship.

Real estate.

Taxes

Military service.

Right of search of tenements.

each of the two contracting parties engages that the citizens or subjects of the other residing in their respective states shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries respectively.

ARTICLE IX.

Trade in either
country with cit-
izens of the
country.

The citizens and subjects of each of the two contracting parties shall be free in the states of the other to manage their own affairs themselves, or to commit these affairs to the management of any persons whom they may appoint as their broker, factor, or agent; nor shall the citizens and subjects of the two contracting parties be restrained in their choice of persons to act in such capacities; nor shall they be called upon to pay any salary or remuneration to any person whom they shall not choose to employ.

Absolute freedom shall be given in all cases to the buyer and seller to bargain together, and to fix the price of any goods or merchandise imported into, or to be exported from, the states and dominions of the two contracting parties, save and except generally such cases wherein the laws and usages of the country may require the intervention of any special agents in the states and dominions of the contracting parties. But nothing contained in this or any other article of the present treaty shall be construed to authorize the sale of spirituous liquors to the natives of the Sandwich Islands, farther than such sale may be allowed by the Hawaiian laws.

ARTICLE X.

Consuls, &c.

Deserters from
vessels.

Each of the two contracting parties may have, in the ports of the other, consuls, vice-consuls, and commercial agents, of their own appointment, who shall enjoy the same privileges and powers with those of the most favored nations; but if any such consuls shall exercise commerce, they shall be subject to the same laws and usages to which the private individuals of their nation are subject in the same place. The said consuls, vice-consuls, and commercial agents, are authorized to require the assistance of the local authorities for the search, arrest, detention and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges, and officers, and shall, in writing, demand the said deserters, proving, by the exhibition of the registers of the vessel, the rolls of the crews, or by other official documents, that such individuals formed part of the crews; and this reclamation being thus substantiated, the surrender shall not be refused. Such deserters, when arrested, shall be placed at the disposal of the said consuls, vice-consuls, or commercial agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the vessel to which they belonged, or sent back to their own country by a vessel of the same nation, or any other vessel whatsoever. The agents, owners, or masters of vessels on account of whom the deserters have been apprehended, upon requisition of the local authorities, shall be required to take or send away such deserters from the states and dominions of the contracting parties, or give such security for their good conduct as the law may require. But if not sent back nor reclaimed within six months from the day of their arrest, or if all the expenses of such imprisonment are not defrayed by the party causing such arrest and imprisonment, they shall be set at liberty, and shall not be again arrested for the same cause. However, if the deserters should

be found to have committed any crime or offence, their surrender may be delayed until the tribunal before which their case shall be depending shall have pronounced its sentence, and such sentence shall have been carried into effect.

ARTICLE XI.

It is agreed that perfect and entire liberty of conscience shall be enjoyed by the citizens and subjects of both the contracting parties, in the countries of the one and the other, without their being liable to be disturbed or molested on account of their religious belief. But nothing contained in this article shall be construed to interfere with the exclusive right of the Hawaiian government to regulate for itself the schools which it may establish or support within its jurisdiction.

Liberty of conscience.

Proviso as to schools.

ARTICLE XII.

If any ships of war or other vessels be wrecked on the coasts of the states or territories of either of the contracting parties, such ships or vessels, or any parts thereof, and all furniture and appurtenances belonging thereunto, and all goods and merchandise which shall be saved therefrom, or the produce thereof, if sold, shall be faithfully restored with the least possible delay to the proprietors, upon being claimed by them, or by their duly authorized factors; and if there are no such proprietors or factors on the spot, then the said goods and merchandise, or the proceeds thereof, as well as all the papers found on board such wrecked ships or vessels, shall be delivered to the American or Hawaiian consul, or vice-consul, in whose district the wreck may have taken place; and such consul, vice-consul, proprietors, or factors, shall pay only the expenses incurred in the preservation of the property, together with the rate of salvage and expenses of quarantine which would have been payable in the like case of a wreck of a national vessel; and the goods and merchandise saved from the wreck shall not be subject to duties unless entered for consumption, it being understood that in case of any legal claim upon such wreck, goods, or merchandise, the same shall be referred for decision to the competent tribunals of the country.

Wrecks.

ARTICLE XIII.

The vessels of either of the two contracting parties which may be forced by stress of weather or other cause into one of the ports of the other, shall be exempt from all duties of port or navigation paid for the benefit of the state, if the motives which led to their seeking refuge be real and evident, and if no cargo be discharged or taken on board, save such as may relate to the subsistence of the crew, or be necessary for the repair of the vessels, and if they do not stay in port beyond the time necessary, keeping in view the cause which led to their seeking refuge.

Vessels driven into port by stress of weather.

ARTICLE XIV.

The contracting parties mutually agree to surrender, upon official requisition, to the authorities of each, all persons who, being charged with the crimes of murder, piracy, arson, robbery, forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall be found within the territories of the other, provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the person so charged shall be found, would justify his apprehension and commitment for trial, if the crime had there been committed; and the respective judges and other magistrates of the two governments shall have authority, upon complaint made under oath, to

Extradition of criminals.

issue a warrant for the apprehension of the person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE XV.

Mail arrange-
ments.

So soon as steam or other mail packets under the flag of either of the contracting parties shall have commenced running between their respective ports of entry, the contracting parties agree to receive at the post-offices of those ports all mailable matter, and to forward it as directed, the destination being to some regular post-office of either country, charging thereupon the regular postal rates as established by law in the territories of either party receiving said mailable matter, in addition to the original postage of the office whence the mail was sent. Mails for the United States shall be made up at regular intervals at the Hawaiian post-office, and despatched to ports of the United States; the postmasters at which ports shall open the same, and forward the enclosed matter as directed, crediting the Hawaiian government with their postages as established by law, and stamped upon each manuscript or printed sheet.

All mailable matter destined for the Hawaiian Islands shall be received at the several post-offices in the United States, and forwarded to San Francisco, or other ports on the Pacific coast of the United States, whence the postmasters shall despatch it by the regular mail packets to Honolulu, the Hawaiian government agreeing on their part to receive and collect for and credit the post-office department of the United States with the United States' rates charged thereupon. It shall be optional to prepay the postage on letters in either country, but postage on printed sheets and newspapers shall in all cases be prepaid. The respective post-office departments of the contracting parties shall in their accounts, which are to be adjusted annually, be credited with all dead letters returned.

ARTICLE XVI.

Continuance
of this treaty.

The present treaty shall be in force from the date of the exchange of the ratifications, for the term of ten years, and further, until the end of twelve months after either of the contracting parties shall have given notice to the other of its intention to terminate the same, each of the said contracting parties reserving to itself the right of giving such notice at the end of the said term of ten years, or at any subsequent term.

Any citizen or subject of either party infringing the articles of this treaty shall be held responsible for the same, and the harmony and good correspondence between the two governments shall not be interrupted thereby, each party engaging in no way to protect the offender, or sanction such violation.

ARTICLE XVII.

Ratification.

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate of the said States, and by his Majesty the King of the Hawaiian Islands, by and with the advice of his Privy Council of State, and the

ratification shall be exchanged at Honolulu within eighteen months from the date of its signature, or sooner if possible.

In witness whereof, the respective plenipotentiaries have signed the same in triplicate, and have thereto affixed their seals.

Done at Washington, in the English language, the twentieth day of December, in the year one thousand eight hundred and forty-nine. Date.

JOHN M. CLAYTON, [SEAL.]
JAMES JACKSON JARVES. [SEAL.]

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