

In The Supreme Court of the United States

NOA KANEALII IO PONO KELII UA MAU,
Petitioner,

v.

TYLER C. SAITO, ET AL.,
Respondents.

On Petition for Writ of Certiorari from the United States Court of
Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Ninth Circuit correctly affirmed the dismissal of Petitioner's claims for lack of subject-matter jurisdiction under the Alien Tort Statute, 28 U.S.C.A. § 1350, where Petitioner asserted that he was a Hawaiian national rather than a United States citizen.

2. Whether the Ninth Circuit was required to separately analyze the historical, statutory, and treaty authorities in determining whether he qualified as an alien under the Alien Tort Statute.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Kalalea Plantation LLC, by and through its attorneys, Watanabe Ing LLP, discloses that Kalalea Plantation LLC is a Hawai'i limited liability company with no parent corporation. No publicly held corporation owns 10% or more of Kalalea Plantation LLC's stock.

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CONSTITUTIONAL AND STATUTORY PROVISIONS

28 U.S.C.A. § 1350 (Alien Tort Statute), 8 U.S.C.A. § 1101(a)(3), 8 U.S.C.A. § 1101(a)(22), and 8 U.S.C.A. § 1405, among other provisions, are set forth in Appendix D of the Petition. The December 20, 1849 Treaty with the Hawaiian Islands is set forth in Appendix E of the Petition. The Newlands Joint Resolution (30 Stat. at L. 750) is set forth in Appendix A of this Opposition.

BRIEF IN OPPOSITION

Respondents Kalalea Plantation LLC and Benjamin F. Garfinkle respectfully oppose Petitioner Noa Kanealii Io Pono I Kelii Ua Mau’s petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

Petitioner argues for the first time in his Petition that the United States District Court for the District of Hawai‘i and the Ninth Circuit erred by failing to engage in a “source-by-source inquiry” to determine whether Petitioner is a citizen of the United States of America. Pet. 9. Petitioner asks this Court to require the lower courts to analyze various authorities to make such a determination, including the December 20, 1849 Treaty with the Hawaiian Islands, the Newlands Joint Resolution, and Ka Palapala Hemolele (Native Hawaiian translation of the Bible). Pet. 14–19.

Such a requirement is inconsistent with Ninth Circuit precedent rejecting assertions of present Hawaiian sovereignty as a basis for defeating federal jurisdiction, as well as this Court’s decisions recognizing the legal effect of the Newlands Joint Resolution. Petitioner identifies no conflict among the courts of appeals concerning the Ninth Circuit’s application of that precedent, nor does he identify any other compelling reason for this Court’s review. Furthermore, contrary to Petitioner’s assertions of the importance of the questions presented, this Court has long settled these questions when it addressed the legal effect of the Newlands Joint Resolution in recognizing Hawai‘i’s annexation to the United States.

Although Petitioner invoked the December 20, 1849 Treaty with the Hawaiian Islands in his amended complaint, he did not develop the particular statutory, treaty-termination, and historical-source arguments now advanced in his Petition. Nor did he substantively oppose the motions to dismiss or avail himself of the district court's opportunity to amend. Pet. App. A-3; B-8–B-11. The petition thus seeks review of arguments that were not fully developed or passed upon below, making this case an unsuitable vehicle for addressing the broader questions presented.

The Court should therefore deny the Petition.

STATEMENT OF THE CASE

1. Petitioner initiated this action in the United States District Court for the District of Hawai'i on July 3, 2023. Pet. App. B-2. The operative pleading is Petitioner's First Amended Complaint, which alleged federal question jurisdiction arising under the Constitution of the United States of America, the December 20, 1849 Treaty with the Hawaiian Islands, various U.S.C.A. statutory provisions, and various UN Conventions. *Id.* B-8. As relevant here, Petitioner did not affirmatively plead diversity jurisdiction but did allege that Petitioner is an "alien to the United States of America". *Id.* B-9 n.6.

On January 19, 2024, Respondents moved to dismiss the First Amended Complaint for lack of subject matter jurisdiction, standing, and for failure to state a claim. *Id.* B-3. Five other defendants separately moved to dismiss the First Amended Complaint. *Id.* B-3–B-5. Petitioner did not oppose the motions to dismiss. Pet. 5; Pet. App. A-3; Pet. App. B-3–B-6.

2. On June 3, 2024, the District Court issued its 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. *Id.* B. The District Court held that it lacked subject matter jurisdiction because the First Amended Complaint failed to present any basis for federal question or diversity jurisdiction. *Id.* B-8–B-10. In relevant part, the District Court held that based on Petitioner's allegations acknowledging that he "is not an alien to Hawai'i," Petitioner "could not rely upon diversity jurisdiction . . . because [Petitioner] and at least one of the many Defendants are residents of Hawai'i." *Id.* B-9–B-10 n.6, 7. The District Court dismissed the First Amended Complaint with leave to amend, allowing Petitioner to remedy the defects in his First Amended Complaint. *Id.* B-11. Petitioner did not file a Second Amended Complaint. Pet. 6; Pet. App. A-3. On January 2, 2025, the District Court dismissed the First Amended Complaint without prejudice for lack of subject matter jurisdiction. *Id.* C.

3. Petitioner appealed the Order Dismissing the Complaint to the Ninth Circuit. *Id.* A-3. Petitioner argued to the Ninth Circuit that he was not an American for purposes of 28 U.S.C.A. § 1350 (Alien Tort Statute) "because he is a Hawaiian national of the Hawaiian Islands." *Id.* The Ninth Circuit rejected Petitioner's contention, holding "[Petitioner's] argument that he is a citizen of a foreign sovereign nation is foreclosed by our precedent," based upon *United States v. Lorenzo*, 995 F.2d 1448 (9th Cir. 1993). *Id.* A-4. The Ninth Circuit held that because Petitioner was an

American citizen, the District Court did not err in concluding that it lacked subject matter jurisdiction under the Alien Tort Statute. *Id.*

REASONS FOR DENYING THE PETITION

I. The Petition Identifies No Circuit Conflict or Other Compelling Reason for Review Under Supreme Court Rule 10.

Petitioner argues that the issues presented are important questions of federal statutory and treaty interpretation. Pet. 19–20. The Petition, however, identifies no conflict between the Ninth Circuit’s decision and any decision of another federal court of appeals or state court of last resort. Nor does it present an important, unsettled federal question warranting this Court’s intervention. *See* Sup. Ct. R. 10.

Regardless of Petitioner’s assertions of the importance of the questions presented, as discussed *infra*, this Court has already interpreted the Newlands Joint Resolution as ceding and annexing the lands of the sovereign Republic of Hawai‘i to the United States. *See In re Wilder’s S.S. Co.*, 183 U.S. 545, 547 (1902); *Territory of Hawaii v. Mankichi*, 190 U.S. 197, 214–15 (1903). Accordingly, this question has already been settled by this Court.

The Ninth Circuit is the only circuit that has addressed whether Native Hawaiians are American citizens, and it has consistently held that the United States federal government does not currently recognize the sovereign Kingdom of Hawai‘i. *United States v. Lorenzo*, 995 F.2d 1448, 1456 (9th Cir. 1993) (“The appellants have presented no evidence that the Sovereign Kingdom of Hawaii is currently recognized by the federal government[.]”); *United States v. Jim*, No. 99-15106, 2000 WL 60084, at *1 (9th Cir. Jan. 21, 2000) (“Hawaii is one of the United States. The federal

government does not recognize any sovereign ‘Kingdom of Hawaii.’” (citing Hawaii Statehood Admissions Act, Pub.L. No. 86-3, 73 Stat 4 (1959)). This line of Ninth Circuit decision-making is consistent with this Court’s own precedent interpreting the Newlands Joint Resolution.

The Ninth Circuit’s unpublished decision in this case does not establish any new rule concerning Hawaiian nationality or treaty rights. Pet. App. A-1–A-4. Rather, Petitioner simply challenges the Ninth Circuit’s application of existing law to the facts of this case, which ordinarily does not warrant review by this Court. *See* Sup. Ct. R. 10.

II. The Ninth Circuit’s Application of Existing Precedent Presents No Question Warranting This Court’s Review.

Petitioner argues that the Ninth Circuit erred by relying upon *United States v. Lorenzo*, 995 F.2d 1448 (9th Cir. 1993) to decide whether Petitioner is an American citizen because *Lorenzo* is not dispositive of the issue of Native Hawaiian citizenship. Pet. 12. Petitioner contends that *Lorenzo* is inapplicable here because *Lorenzo* did not resolve the issue of citizenship of Native Hawaiians in the context of the Alien Tort Statute. *Id.*

In *Lorenzo*, the appellants claimed that the federal district court lacked jurisdiction to hear their case because they were “Hawaiian nationals.” 995 F.2d at 1456. The Ninth Circuit held that appellants had “presented no evidence that the Sovereign Kingdom of Hawaii is currently recognized by the federal government[.]” *Id.* The Ninth Circuit concluded that the federal district court had jurisdiction over the appellants under 18 U.S.C.A. § 3231.

The Ninth Circuit relied on *United States v. Lorenzo*, 995 F.2d 1448, 1456 (9th Cir. 1993), in rejecting Petitioner’s assertion that his claimed Hawaiian nationality established alienage under the Alien Tort Statute. Although *Lorenzo* arose in the context of federal criminal jurisdiction, the Ninth Circuit applied its reasoning to Petitioner’s jurisdictional argument in this case. Pet. App. A-3–A-4. Petitioner identifies no conflict among the courts of appeals concerning that application of precedent, nor does he demonstrate that the distinction he draws between sovereign status and individual citizenship would alter the jurisdictional disposition of his claims. See Sup. Ct. R. 10. The Ninth Circuit’s application of existing precedent to Petitioner’s jurisdictional allegations does not present a compelling reason for this Court’s discretionary review.

Even assuming *arguendo* that Petitioner could establish alienage, that determination alone would not establish a cognizable claim under the Alien Tort Statute. The Alien Tort Statute confers jurisdiction over civil actions brought by aliens for torts committed in violation of the law of nations or a treaty of the United States. 28 U.S.C.A. § 1350. The statute is jurisdictional and does not create a general cause of action for every alleged violation of international law. *Cisco Sys., Inc. v. Doe I*, 609 U.S. 141, 146 (2026). Petitioner has not demonstrated that his allegations regarding removal from certain property and the purported conduct of Defendants support a cognizable Alien Tort Statute claim. See Pet. App. B-2–B-3, B-8–B-10. Thus, even if Petitioner were considered an alien, he still has not shown that he can pursue his claim under the Alien Tort Statute.

III. This Court Has Already Addressed the Impact of the Newlands Joint Resolution on Hawai‘i’s Sovereignty.

Petitioner asks this Court to require the lower courts to make findings and identify the governing rule beyond *Lorenzo* to decide whether Petitioner is an American citizen. Pet. 10–11. Specifically, Petitioner contends that the lower courts should have undertaken a more extensive analysis of the December 20, 1849 Treaty with the Hawaiian Islands, the Newlands Joint Resolution, and other historical authorities in determining his asserted citizenship and alienage.¹ *Id.* 14–19.

This Court has already addressed the legal effect the Newlands Joint Resolution. In *In re Wilder’s S.S. Co.*, the Court recognized that the Hawaiian Islands were annexed to the United States pursuant to the Joint Resolution of the Congress of the United States of July 7, 1898. 183 U.S. at 547 (discussing 30 Stat. at L. 750). Similarly, in *Territory of Hawaii v. Mankichi*, the Court explained that the principal purposes of the resolution included accepting the cession of the Hawaiian Islands, annexing them as United States territory, and replacing existing Hawaiian treaties with treaties of the United States. 190 U.S. at 214–15. These decisions establish that the legal effects of annexation have long been recognized by this Court. *Id.* Petitioner has not demonstrated that his reliance on the December 20, 1849 Treaty with the Hawaiian Islands or other historical authorities presents a question requiring reconsideration of those decisions.

¹ Petitioner also cites to the Ka Palapala Hemolele (Hawaiian Bible) but makes no coherent arguments regarding how the Native Hawaiian translation of the Bible affects the determination of whether Native Hawaiians are American citizens. Pet. 17–19.

The authorities cited by Petitioner do not support the proposition that this Court or the lower courts should be required to analyze the Newlands Joint Resolution and the December 20, 1849 Treaty with the Hawaiian Islands anew. Furthermore, Congress has expressly addressed the citizenship of persons born in Hawai‘i. 8 U.S.C.A. § 1405 provides, in relevant part, “A person born in Hawaii on or after April 30, 1900, is a citizen of the United States at birth.” Petitioner acknowledges this provision but fails to demonstrate how its application to his individual circumstances would establish that he is neither a citizen nor a national of the United States. Pet. 10. Nor does Petitioner explain how the historical authorities cited in the Petition would displace this statute, which provides the federal framework for Hawai‘i citizenship. *Id.* Accordingly, Petitioner has not demonstrated that the Ninth Circuit’s application of its existing precedent presents an important federal question warranting this Court’s review.

Petitioner instead argues that the lower courts should have made findings of fact and applied the law to those facts. *Id.* The District Court did so, holding based on Petitioner’s own acknowledgment that “he is not an alien to Hawai‘i” and the Admissions Act that Petitioner was not an alien under the Alien Tort Statute. Pet. App. B-10 n.6. (citing P.L. 86-3 (Mar. 18, 1959)).² The District Court therefore did not err in deciding it lacked subject matter jurisdiction over the First Amended Complaint.

² Petitioner makes no arguments regarding the District Court’s citation to the Admissions Act as the legal basis for determining Petitioner was an American citizen.

Moreover, although Petitioner invoked certain treaty and historical authorities below, the specific arguments concerning treaty termination, statutory citizenship, and the legal significance of additional historical sources now advanced in the Petition were not fully developed or passed upon by the District Court or the Ninth Circuit. This Court ordinarily does not decide questions that were neither pressed nor passed upon below. *See United States v. Ortiz*, 422 U.S. 891, 898 (1975) (declining to consider issues raised for the first time in petition for certiorari). For these reasons, this case is not an appropriate vehicle for the Court to consider those arguments.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,
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October 21, 2026

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APPENDIX A

Fifty-fifth Congress of the United States of America;

At the Second Session,

Begun and held at the City of Washington on Monday, the sixth day of December,
one thousand eight hundred and ninety-seven.

JOINT RESOLUTION

To provide for annexing the Hawaiian Islands to the United States.

Whereas, the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America, all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States, the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States and are subject to

the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.

The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition: *Provided*, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

Until Congress shall provide for the government of such islands all the civil, judicial, and military powers exercised by the officers of the existing government in said islands shall be vested in such person or persons and shall be exercised in such manner as the President of the United states shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned.

The existing treaties of the Hawaiian Islands with foreign nations shall forthwith cease and determine, being replaced by such treaties as may exist, or as may be hereafter concluded, between the United States and such foreign nations. The municipal legislation of the Hawaiian Islands, not enacted for the fulfillment of the treaties so extinguished, and not inconsistent with this joint resolution nor contrary to the Constitution of the United States nor to any existing treaty of the United States, shall remain in force until the Congress of the United States shall otherwise determine.

Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian Islands the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged.

The public debt of the Republic of Hawaii, lawfully existing at the date of the passage of this joint resolution, including the amounts due to depositors in the Hawaiian Postal Savings Bank, is hereby assumed by the Government of the United States; but the liability of the United States in this regard shall in no case exceed four million dollars. So long, however, as the existing Government and the present commercial relations of the Hawaiian Islands are continued as hereinbefore, provided said Government shall continue to pay the interest on said debt.

There shall be no further immigration of Chinese into the Hawaiian Islands, except upon such conditions as are now or may hereafter be allowed by the laws of the United States; and no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.

SEC. 1. The President shall appoint five commissioners, at least two of whom shall be residents of the Hawaiian Islands, who shall, as soon as reasonably practicable, recommend to Congress such legislation concerning the Hawaiian Islands as they shall deem necessary or proper.

SEC. 2. That the commissioners hereinbefore provided for shall be appointed by the President, by and with the advice and consent of the Senate.

SEC. 3. That the sum of one hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, and to be immediately available, to be expended at the discretion of the President of the United States of America, for the purpose of carrying this joint resolution into effect.