

No. 12-17808

---

---

IN THE  
**United States Court of Appeals  
for the Ninth Circuit**

---

GEORGE K. YOUNG, JR.,  
*Plaintiff-Appellant,*

v.

STATE OF HAWAII, ET AL,  
*Defendants-Appellees.*

---

On Appeal from the United States District Court  
for the District of Hawaii, No. 1:12-cv-00336-HG-BMK  
District Judge Helen Gillmor

---

**MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF  
PETITION FOR REHEARING *EN BANC***

---

Pursuant to Federal Rule of Appellate Procedure 27 and Ninth Circuit Rule 27-1, Defendants respectfully request leave to file the attached Reply in Support of Petition for Rehearing *En Banc*.

1. On September 14, 2018, Defendants filed a petition for rehearing *en banc*, arguing that *en banc* rehearing is warranted because the panel's decision rests on a severe misreading of Hawaii law, splits from the decisions of three (now four) Circuits, defies this Court's decision in *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016) (*en banc*), and raises an issue of profound importance.

2. Young filed an unopposed motion for a 30-day extension of the time to respond, which this Court granted. Young then filed a brief opposing rehearing *en banc* on November 8.

3. This Court's rules do not expressly permit or prohibit a reply in support of a petition for rehearing *en banc*. However, this Court has repeatedly granted leave to file such replies. *See, e.g., Joffe v. Google, Inc.*, 746 F.3d 920, 922 (9th Cir. 2013); *Skokomish Indian Tribe v. United States*, 410 F.3d 506, 509 (9th Cir. 2005).

4. Leave to file a reply is warranted here. Young's brief contains several misstatements of fact and law: Among other errors, Young asserts that "*Defendants themselves* \*\*\* advanced" the interpretation of Hawaii law adopted by the panel, Opp. 3, when Defendants repeatedly and expressly informed the panel—and a member of the panel majority acknowledged—that Defendants disagreed with that interpretation. Reply 2-3. Young also calls the claim of a circuit split "nonsense," Opp. 9, even though the panel majority, the dissent, and now the First Circuit have all acknowledged a split between the panel and the decisions of at least three Circuits. Reply 6-7. A reply brief would assist this Court's review by enabling Defendants to address these and other matters. Counsel for Young have stated that they do not consent to this Motion.

WHEREFORE, Defendants respectfully request that leave to file the attached Reply in Support of Petition for Rehearing *En Banc* be granted.

Respectfully submitted,

RUSSELL A. SUZUKI  
Attorney General of the State of Hawaii  
CLYDE J. WADSWORTH  
Solicitor General of the State of Hawaii  
KIMBERLY T. GUIDRY  
ROBERT T. NAKATSUJI  
KALIKO‘ONALANI D. FERNANDES  
Deputy Attorneys General  
DEPARTMENT OF THE ATTORNEY  
GENERAL, STATE OF HAWAII  
425 Queen Street  
Honolulu, HI 96813

*Attorneys for State of Hawaii  
Defendants-Appellees*

JOSEPH K. KAMELAMELA  
Corporation Counsel  
LAUREEN L. MARTIN  
Litigation Section Supervisor  
D. KAENA HOROWITZ  
Deputy Corporation Counsel  
COUNTY OF HAWAII  
101 Aupuni Street, Suite 325  
Hilo, Hawaii 96720

*Attorneys for County of Hawaii  
Defendants-Appellees*

/s/ Neal K. Katyal  
NEAL K. KATYAL  
COLLEEN E. ROH SINZDAK  
MITCHELL P. REICH  
HOGAN LOVELLS US LLP  
555 Thirteenth Street NW  
Washington, DC 20004  
Telephone: (202) 637-5600  
Fax: (202) 637-5910  
Email: neal.katyal@hoganlovells.com  
*Attorneys for Defendants-Appellees*

## **CERTIFICATE OF COMPLIANCE**

I certify that the forgoing Motion complies with the type-volume limitation of Fed. R. App. 27 because it contains 347 words. This Motion complies with the typeface and type style requirements of Fed. R. App. P. 27 because it has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman typeface.

/s/ Neal K. Katyal  
Neal K. Katyal

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2018, I filed the foregoing Motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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

/s/ Neal K. Katyal  
Neal K. Katyal