U. S. House Committee on Natural Resources
July 29, 2020 Full Committee Markup on H.R. 6535
Additional Remarks for the Record
U.S. Congressman Ed Case

Chairman Grijalva, Ranking Member Bishop and fellow Committee members, I respectfully submit these additional remarks for the record on H.R. 6535, introduced by my friend and colleague on the Committee, Mr. Gallego, also Chair of the Committee's Subcommittee on Indigenous Peoples of the United States on which I am also honored to serve.

H.R. 6535, considered and unanimously reported by this Committee on July 29, 2020, would extend federal tort claims coverage for certain personal injury claims to urban Indian organizations by deeming them part of the Public Health Service, similar to current coverage provided to Indian tribes, tribal organizations, Indian contractors and employees. I fully endorse this measure and was pleased to be able to support it in both Subcommittee and full Committee.

However, I must register my deep concern that Native Hawaiian Health Care Systems (NHHCS) have not also been extended the same coverage in this measure or otherwise. Although there are legitimate procedural and related non-substantive reasons for not including them in this specific vehicle, I wish to affirm for the record that this is clearly unfinished business that should and must be remedied by this Committee and Congress at the earliest opportunity.

The current federal tort claims coverage extends to many health care providers serving American Indian and Alaska Native individuals in the Indian Health Service (IHS) and tribal facilities as part of the undertakings and obligations of our country to our indigenous peoples. Whole segments of our indigenous populations depend on these providers for their health needs, in particular primary and preventive care. The practical effect of covering these critical organizations under the Federal Tort Claims Act (FTCA) is to simplify the processing and resolution of medical malpractice and other personal injury claims against the organization, which expedites settlement of legitimate claims and decreases administrative and related expense burdens, thus enabling providers to deliver more extensive and better service to their communities.

FTCA coverage has extended for decades to the IHS and tribal organizations including indigenous-focused federally qualified health centers (to include Native Hawaiian Community Health Centers (NHCHC).) However, for reasons that reflect simple omission rather than any other explanation, urban Indian organizations and NHHCS, first established under the Native Hawaiian Health Care Improvement Act of 1988, are not currently covered under the FTCA. This bill would correct that as to urban Indian organizations but not NHHCS.

There is no policy or functional differentiation among urban Indian organizations, NHHCS, tribal organizations and NHCHC in FTCA coverage, nor between NHHCS and urban Indian organizations. Both urban Indian organizations and NHHCS are devoted to the same needs for the same reasons as the others. In fact, in Hawai'i, where we have the largest population of Native Hawaiians of any state but relatively few Native Americans and Alaska Natives, our NHHCS actually contract with the IHS to provide our own and visiting Native Americans and Alaska Natives with reduced cost health care and payer of last resort services (and at actual costs that far exceed the contracted amounts).

Moreover, in the public health context, there is every reason for Native Hawaiians to seek the same benefits as afforded to other indigenous organizations under FTCA coverage. Even aside from COVID-19, Native Hawaiians suffer from the shortest life expectancy of the major ethnic groups in Hawai'i due

to underlying medical conditions such as diabetes, coronary heart disease and asthma. With higher unemployment rates, Native Hawaiians are in particular need of the culturally relevant, lower cost health care options offered by Native Hawaiian-focused organizations like NHHCS. All this has been worsened by COVID-19, which has inflicted some of the highest infection and mortality rates on Native Hawaiian/Pacific Islander communities nationwide. The extension of FTCA to NHHCC is just one of many initiatives that can make a real difference in ensuring NHHCS can continue to serve their own populations in these times of great challenge and need.

During my Subcommittee on the Indigenous Peoples of the United States' July 19, 2020 hearing on H.R. 6535, I asked IHS Director RADM Michael D. Weahkee whether there was any policy reason to differentiate between NHHCS, urban Indian organizations and other tribal health care providers in FTCA coverage. Director Weahkee responded: "In one of my roles as Indian Health Service Director, I serve as the Vice Chair of the Interdepartmental Council on Native American Affairs at the Department of Health and Human Services, and that responsibility extends not only to our American Indian and Alaska Native populations, but also to our Native Hawaiian and Pacific Islanders, and so in that chair I would see the same advantage toward Native Hawaiian programs as I discussed here today for our American Indian urban Indian organizations." Further, the Congressional Budget Office previously reviewed similar legislation, the Native Hawaiian Health Care Improvement Reauthorization Act of 2003, and determined there was no appreciable cost to the federal government.

Aside from these bill specifics, I ask this Committee to understand and appreciate my Native Hawaiian community's goal of extending FTCA coverage to NHHCS, and its great concern at being excluded from H.R. 6535, as not just a policy inconsistency but in a much broader context. To repeat, Native Hawaiians are the indigenous peoples of our country to the same degree and extent as other indigenous peoples. As such, the United States has undertaken a similar special trust responsibility to Native Hawaiians dating back to Hawaii's entry into the United States as a territory in 1900, and continuing through the seminal century-old Hawaiian Homes Commission Act of 1920 and some 150-plus more Native Hawaiian federal statutes and equally if not more numerous specific regulations, administrative actions and other initiative since including the Native Hawaiian Education Act and Native Hawaiian Health Care Improvement Act. This is not a new or questionable relationship in any way and has the same long and often difficult history as other indigenous peoples.

Notwithstanding, Native Hawaiians have faced decades of being overlooked, ignored and excluded in our federal initiatives to fulfill our country's trust responsibilities to our indigenous peoples. It has proven too easy to ask Native Hawaiians to just wait while we take care of another indigenous concern first, while too often the wait has not materialized into any later action. So please understand that when Native Hawaiians express great concern over exclusion from a seemingly straightforward bill like H.R. 6535, their skepticism, apprehension and distrust has deep roots that transcend this specific bill.

Chair, Ranking Member and Committee colleagues, I personally appreciate your consideration of my additional remarks on behalf of our country's vital Native Hawaiian community, and hope that I have provided you with some broader appreciation of why we believe that inclusion of NHHCS in FTCA coverage as is provided for virtually all other indigenous health care organizations is so important. I look forward to working with your and our like-minded colleagues to achieve such inclusion in other appropriate vehicles.

Mahalo nui loa (thank you very much).