



**STATE OF HAWAII**  
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October 1, 2021

The Honorable Teresa Leger Fernández  
Chair  
Subcommittee for Indigenous Peoples of the  
United States  
House Committee on Natural Resources  
U.S. House of Representatives  
1324 Longworth House Office Building  
Washington, DC 20515

The Honorable Don Young  
Ranking Member  
Subcommittee for Indigenous Peoples of the  
United States  
House Committee on Natural Resources  
U.S. House of Representatives  
1324 Longworth House Office Building  
Washington, DC 20515

The Honorable Ed Case  
U.S. House of Representatives  
2210 Rayburn House Office Building  
Washington, DC 20515

The Honorable Kaiuli‘i Kahele  
U.S. House of Representatives  
1205 Longworth House Office Building  
Washington, DC 20515

**Re: Testimony for the Record on the House Committee on Natural Resources  
Subcommittee for Indigenous Peoples of the United States October 5, 2021, Legislative  
Hearing on H.J. Res. 55, the Prince Jonah Kūhiō Kalaniana‘ole Protecting Family Legacies  
Act**

Aloha e Chair Leger Fernández, Ranking Member Young, Representative Case,  
Representative Kahele, and Members of the Subcommittee for Indigenous Peoples of the United  
States:

Mahalo nui loa (thank you very much) for the opportunity to provide testimony to the  
House Committee on Natural Resources Subcommittee for Indigenous Peoples of the United  
States on the October 5, 2021, Legislative Hearing on H.J. Res 55, the Prince Jonah Kūhiō  
Kalaniana‘ole Protecting Family Legacies Act.

In 2020, the Office of Hawaiian Affairs (“OHA”) enacted a 15-year strategic plan for  
2020 through 2035 entitled *Mana I Maui Ola* (Strength to Wellbeing). Our strategic plan is built  
upon three foundations that have the power to affect the wellbeing of Native Hawaiians: (1)  
‘Ohana (family), (2) Mo‘omeheu (culture), and (3) ‘Āina (land and water). OHA is building off  
these foundations to bring OHA’s vision statement to life: *Ho‘oulu Lāhui Aloha* (To Raise a

Beloved Lāhui). Supporting programs to secure housing for Native Hawaiians is one way we can raise a *Lāhui Aloha*; thus, one of OHA’s most important strategic goals for our 15-year plan is to support the implementation of the Hawaiian Homes Commission Act and other efforts to meet the housing supply needs of Native Hawaiian ‘ohana (families).

OHA strongly supports Native Hawaiian federal housing programs. Consistent with our earlier support of Act 80 four years ago at the State level, the Office of Hawaiian Affairs supports qualified family members who are at least one-thirty-second blood or more of Native Hawaiian ancestry to continue their family’s tenancy on their Hawaiian homestead leased lands. This change provides stability for homestead families at risk of losing their home or business due to a lessees’ death; it will further allow homestead families to maintain and invest in their home or business. With this in mind, this testimony provides background on OHA’s standing to represent Native Hawaiians and explains the federal trust responsibility owed to Native Hawaiians. It goes on to discuss Native Hawaiian federal housing programs, the challenges facing Native Hawaiians around housing, the need for Native Hawaiian self-determination, and the need for equitable funding for Native Hawaiian federal programs in the wake of the COVID-19 pandemic.

### **Background on OHA and Its Standing to Represent Native Hawaiians**

Established by our state’s Constitution,<sup>1</sup> OHA is a semi-autonomous agency of the State of Hawai‘i mandated to better the conditions of Native Hawaiians. Guided by a board of nine publicly elected trustees, all of whom are Native Hawaiian, OHA fulfills its mandate through advocacy, research, community engagement, land management, and the funding of community programs. Hawai‘i state law recognizes OHA as the principal public agency in the state responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians.<sup>2</sup> Furthermore, state law directs OHA to advocate on behalf of Native Hawaiians;<sup>3</sup> to advise and inform federal officials about Native Hawaiian programs; and to coordinate federal activities relating to Native Hawaiians.<sup>4</sup>

### **Trust Responsibility Owed to All Native Americans**

Native Hawaiians are owed the same trust responsibility as any other Native American group. To meet this obligation, Congress—oftentimes through the bipartisan work of this Subcommittee and its Members—has created policies to promote education, health, housing, and a variety of other federal programs that support Native Hawaiian self-determination. Similar to American Indians and Alaska Natives, Native Hawaiians have never relinquished our right to

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<sup>1</sup> HAW. CONST. ART. XII, § 5 (1978).

<sup>2</sup> Haw. Rev. Stat. § 10-3(3).

<sup>3</sup> Haw. Rev. Stat. § 10-3(4).

<sup>4</sup> Haw. Rev. Stat. § 10-6(a)(4).

self-determination despite the United States’ involvement in the illegal overthrow of Queen Lili‘uokalani in 1893 and the dismantling of our Hawaiian government.

In fact, over 150 Acts of Congress consistently and expressly acknowledged or recognized a special political and trust relationship to Native Hawaiians based on our status as the Indigenous, once-sovereign people of Hawai‘i. Among these laws are the Hawaiian Homes Commission Act, 1920 (42 Stat. 108) (1921), the Native Hawaiian Education Act (20 U.S.C. § 7511) (1988), the Native Hawaiian Health Care Improvement Act (42 U.S.C. § 11701) (1988), and the Hawaiian Homelands Homeownership Act codified in the Native American Housing Assistance and Self Determination Act, Title VIII (25 U.S.C. § 4221) (2000).

As Congress holds the plenary power to exercise its duties to regulate Indian Affairs, it is Congress who decides how and to whom that special relationship is owed. Through enacted laws to implement the trust responsibility to Native Hawaiians, Congress has explicitly acknowledged that the grounds for these programs are rooted in the status of Native Hawaiians as an Indigenous, once-sovereign people. Moreover, whenever possible, Congress extends to Native Hawaiians the rights and privileges accorded to American Indians and Alaska Natives. Some examples where Native Hawaiians are included alongside American Indians and Alaska Natives are the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001), the Native American Programs Act of 1974 (42 U.S.C. § 2991), the Older Americans Act of 1965 (42 U.S.C. § 3001), and the Native American Tourism and Improving Visitor Experience (NATIVE) Act (25 U.S.C. § 4351). Since Congress has clearly established a special relationship to Native Hawaiians, this Subcommittee holds the jurisdiction to ensure that the federal government implements the trust responsibility fully and equally to all Native Americans, including American Indians, Alaska Natives, and Native Hawaiians.

### **Native Hawaiian Federal Housing Programs**

The Hawaiian Homes Commission Act (HHCA) was created to rehabilitate the Native Hawaiian people through government-sponsored homesteading. In 1920, Prince Jonah Kūhiō Kalaniana‘ole, Hawai‘i’s Delegate to Congress, introduced a bill to address the devastating impact Western contact inflicted on the Native Hawaiian people. At the time of first contact in 1778, the Native Hawaiian population was estimated to be as high as 1,000,000 people. By 1920, the Native Hawaiian population was estimated between 20,000 to 30,000 people. Prince Kūhiō recognized that his people were dying, and so he proposed to allow Native Hawaiians the opportunity to reestablish themselves by providing access to residential, agricultural, and pastoral land formerly held by the Kingdom of Hawai‘i.

When Congress contemplated the HHCA, they discussed which lands to set aside and settled on restoring some part of the crown lands, which were held in trust for the Native Hawaiian people. In 1921, the HHCA became law. This action set aside 203,500 acres in Hawai‘i for 99 year leases to Hawaiian Homes beneficiaries. The passage of the HHCA, and its

consideration by Congress one century ago, demonstrates the view of Congress that the welfare of these Indigenous people is a federal responsibility.

Since that time, Congress has continued to act to meet the housing needs of Native Hawaiians. The Hawaiian Homelands Homeownership Act (HHHA) facilitates Native Hawaiian self-determination by supporting part of the Department of Hawaiian Home Lands’ (DHHL’s) mission—to develop and deliver land and housing to Native Hawaiians. Congress enacted the HHHA in 2000. The HHHA established the Native Hawaiian Housing Block Grant (NHHBG) program and the Section 184A Loan Guarantees for Native Hawaiian Housing. The NHHBG provides much needed funding to DHHL to deliver new construction, rehabilitation, infrastructure, and various support services to beneficiaries living on DHHL lands. The 184A Loan Guarantee program provides eligible beneficiaries with access to construction capital on DHHL lands by fully guaranteeing principal and interest due on loans. The program currently serves owner-occupant single family dwellings on the DHHL lands. Together, these programs help DHHL to carry out the vision of our Prince Kūhiō.

### **The Housing Needs of Native Hawaiians**

Despite these successful programs, housing disparities persist for the Native Hawaiian community. The Native Hawaiian community prefers homeownership over renting, but Native Hawaiian homeownership lags behind other residents in Hawai‘i.<sup>5</sup> Native Hawaiian households face higher rates of facilities problems than their peers in the State, including a higher number of households that lack complete plumbing facilities.<sup>6</sup> Further, Native Hawaiian households are more frequently overcrowded than their peers.<sup>7</sup>

The pandemic has exacerbated housing issues for Native Hawaiian families. As the pandemic continues and temporary safety nets are removed, many people and organizations are deeply concerned about a possible eviction, foreclosure, and rental crisis. OHA—as a member of a coalition of organizations in the State—is actively engaged in ensuring this crisis does not come to fruition for the Native Hawaiian community.<sup>8</sup> As of June 2020, the U.S. Census Bureau estimated that approximately twenty percent of Hawai‘i’s households have been unable to make housing payments or do not feel confident they can make their upcoming rent or mortgage payments.<sup>9</sup> Struggles to afford rent and mortgage payments are not always reflected in the number of delinquent accounts. The University of Hawai‘i Economic Research Organization (UHERO) has administered monthly surveys during the pandemic. Survey results indicate a

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<sup>5</sup> HUD, HOUSING NEEDS OF NATIVE HAWAIIANS: A REPORT FROM THE ASSESSMENT OF AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING NEEDS xvi (May 2017), <https://www.huduser.gov/portal/sites/default/files/pdf/HNNH.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Hawai‘i Coalition Urges Increased Protections for Renters*, HAW. NEWS NOW (June 22, 2020), <https://www.hawaiinewsnow.com/2020/06/22/hawaii-coalition-urges-increased-protections-renters/>.

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

sustained increase in rental hardships during the second half of 2020,<sup>10</sup> including renters sacrificing well-being to pay rent.<sup>11</sup> UHERO’s most recent study of rental housing hardships in 2021 project that significant number of households will have unsustainable changes in their housing cost burdens in all four quarters and that some households’ needs will extend beyond the end of 2021.<sup>12</sup>

### **Homelessness in the Native Hawaiian Community**

Homelessness is a highly visible challenge facing Native Hawaiians and the State of Hawai‘i. The State of Hawai‘i has the second highest homelessness rate (46 per 10,000 people) in the United States, falling only behind New York (47 per 10,000 people); further, more than 70% of homeless people in Hawai‘i live in unsheltered locations.<sup>13</sup> Although Native Hawaiians make up approximately 21% of Hawai‘i’s population, they are disproportionately represented in homelessness; on the island of O‘ahu, Native Hawaiians make up 43%—nearly half—of the homeless population.<sup>14</sup> To compound this issue, Native Hawaiians make up 41% of the unsheltered homeless population in Honolulu; living unsheltered means that these Native Hawaiians receive little to no support from homeless support and other services.<sup>15</sup> Unfortunately, Native Hawaiians veterans—those who have sacrificed the most for our country and our freedom—are also disproportionately represented in the homeless population of Hawai‘i.<sup>16</sup> We urge this Subcommittee to support for housing programs and other services to address the social determinants of health.

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<sup>10</sup> *November Rental Market: Troubling Signs Remain as State Prepares for an Uncertain 2021*, ECONOMIC RESEARCH ORGANIZATION AT THE UNIV. OF HAW. (Jan. 14, 2021), <https://uhero.hawaii.edu/november-rental-market-troubling-signs-remain-as-state-prepares-for-an-uncertain-2021>.

<sup>11</sup> *The August Rental Market: Struggling Tenants and Rising Vacancies*, ECONOMIC RESEARCH ORGANIZATION AT THE UNIV. OF HAW. (Oct. 5, 2020), <https://uhero.hawaii.edu/the-august-rental-market-struggling-tenants-and-rising-vacancies>.

<sup>12</sup> *Estimating COVID-19 Induced Rental Housing Hardship in 2021*, ECONOMIC RESEARCH ORGANIZATION AT THE UNIV. OF HAW. (Dec. 15, 2020), <https://uhero.hawaii.edu/estimating-covid-19-induced-rental-housing-hardship-in-2021>.

<sup>13</sup> HUD, THE 2020 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS 10, 22, <https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf>; Natl. Alliance to End Homelessness, State of Homelessness: Hawaii, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-dashboards/?State=Hawaii>.

<sup>14</sup> United States. Bureau of the Census. Census 2010 Summary File 1 (SF 1) (June 16, 2011).

<sup>15</sup> CITY & COUNTY OF HONOLULU & PARTNERS IN CARE, UNSHELTERED IN HONOLULU 4–5 (July 2020), <https://www.honolulu.gov/rep/site/ohou/UnshelteredHNL-2020-compressed.pdf>.

<sup>16</sup> U.S. Interagency Council on Homelessness, Expert Panel on Homelessness among American Indians, Alaska Natives, and Native Hawaiians 8, [https://www.usich.gov/resources/uploads/asset\\_library/Expert\\_Panel\\_on\\_Homelessness\\_among\\_American\\_Indians%2C\\_Alaska\\_Natives%2C\\_and\\_Native\\_Hawaiians.pdf](https://www.usich.gov/resources/uploads/asset_library/Expert_Panel_on_Homelessness_among_American_Indians%2C_Alaska_Natives%2C_and_Native_Hawaiians.pdf).

## **The Removal of Native Hawaiians from their Home Lands**

Native Hawaiian have been forced to move out of Hawai‘i due to the state’s prohibitive cost of living. As of 2010, approximately half of Native Hawaiians live on the U.S. mainland.<sup>17</sup> OHA supports federal programs that help Native Hawaiians stay in Hawai‘i. Hawai‘i is often described as paradise, and it is one of the most popular vacation spots in the world. Yet, our cost of living far exceeds anywhere else in the United States, with the exception of Brooklyn and Manhattan.<sup>18</sup> This high cost of living makes it difficult for families to survive in Hawai‘i and families are often, as some say, “priced out of paradise.” This phrase, however, fails to accurately depict this dire situation. This high cost of living means that Kānaka Maoli (Native Hawaiians) are—yet again—pushed out of our lands for the sake of Western economic interests.

### **Native Hawaiians Need Self-Determination**

OHA urges the Subcommittee to support Native Hawaiian federal housing programs, but we further urge Congress to ensure that the voice of the Native Hawaiian people is included in the administration of these programs and all federal programs benefitting Native Hawaiians.

While the federal trust responsibility has many facets, one of the most critical safeguards of effective self-determination is the ability to consult with the federal government. Under President Clinton’s Executive Order 13175, and subsequent memoranda from the Bush, Obama, and now Biden Administrations, the U.S. Government recognizes the right to sovereignty and self-determination of this nation’s Native people. While this is a step in the right direction, the omission of Native Hawaiians from federal consultation requirements has stifled and limited Native Hawaiian voices from being able to comment upon and inform federal projects and programs for the past two decades. Despite our exclusion from these executive orders, Congress’s thoughtful inclusion of Native Hawaiians in key legislation like the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001) and the National Historic Preservation Act (NHPA) (16 U.S.C. § 470 et seq.) have demonstrated that Native Hawaiians can be effectively included in consultation now, with representation through Native Hawaiian organizations. Congress expressly established the Office of Native Hawaiian Relations (ONHR) within the Department of the Interior to implement the special legal relationship between the federal government and Native Hawaiians and to specifically integrate meaningful, regular, and appropriate consultation with the Native Hawaiian community on issues significantly affecting our resources, rights, and lands.

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<sup>17</sup> HUD, HOUSING NEEDS OF NATIVE HAWAIIANS: A REPORT FROM THE ASSESSMENT OF AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING NEEDS 6 (May 2017), <https://www.huduser.gov/portal/sites/default/files/pdf/HNNH.pdf>.

<sup>18</sup> *Id.* at 21.

Moreover, OHA is already actively involved with federal consultations. OHA receives and reviews approximately 240 requests for federal consultations each year, including Section 106 NHPA and NAGPRA reviews. The federal government takes many more actions affecting the Native Hawaiian community than are covered by these two statutes without ever giving Native Hawaiians an opportunity to consult. This must change.

Ensuring Native Hawaiians are informed of all proposed federal actions and allowed to voice their comments and perspectives on them will help to correct this country’s historic wrongs against Native Hawaiians. Moreover, this will also improve the quality of federal undertakings and projects. Federal consultation with entities that serve Native Hawaiians such as OHA, the Department of Hawaiian Home Lands, the Native Hawaiian Education Council, Papa Ola Lōkahi, and the Native Hawaiian Health Care Systems, among others, enables Native Hawaiians to access this basic tenet of self-determination—having a meaningful say in our own governance. We urge this Subcommittee to pass legislation requiring meaningful federal consultation across the entire federal government and to extend this right to all Native Americans, including Native Hawaiians. We further urge Congress to appropriate funding for ONHR to carry out its mission to expand, facilitate and coordinate the establishment of consultation polices across all agencies of the federal government.

### **The Need for Equitable Funding for Native Hawaiians in COVID-19 Relief and Other Legislative Packages**

In light of the disparities facing Native Hawaiians, Native Hawaiian federal programs need equitable funding in COVID-19 relief bills and other legislative packages that Congress continues to work on. Like other Native communities, housing has become even more vital during this pandemic. Prior to the pandemic, Native Hawaiians faced one of the most expensive housing markets in the country. To address housing needs, DHHL has used NHHBG funds for emergency rental assistance for eligible Native Hawaiians; rental subsidies for lower income elderly; rehabilitation of homes primarily for elderly or disabled residents; homeownership opportunities for lower income working families; and homeownership and rental counseling to address barriers experienced by Native Hawaiians.

Despite the federal trust responsibility owed to Native Hawaiians, we continue to see significant disparities in the federal funds delivered to Native Hawaiian programs across all areas of work. Mahalo nui loa to our Hawai‘i congressional delegation for their tireless efforts to advocate and secure for equitable funding. We urge all Members of this Subcommittee to honor the trust responsibility owed to Native Hawaiians by supporting their work and ensuring that Native Hawaiians programs receive this urgently needed equitable funding.

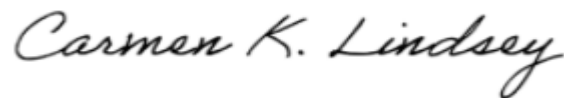
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The effects of the pandemic are taking an increased toll on the Native Hawaiian community. In July, Native Hawaiians disproportionately made up approximately one-third of all COVID-19 cases in Hawai‘i.<sup>19</sup> The number of new Native Hawaiian COVID-19 cases per week increased by over 600% in June and July, outpacing increases in all other major race/ethnicity groups in Hawai‘i.<sup>20</sup> While the State of Hawai‘i’s average vaccination rate by community is approximately 60%, Native Hawaiians are believed to only have about half of that rate (approximately 35%).<sup>21</sup> Equitable relief and support to increase vaccinations and to mitigate the harms of the pandemic are urgently needed.

### Next Steps

Mahalo for the opportunity to submit testimony for this Legislative Hearing on H.J. Res. 55. OHA supports federal policies, laws, and programs that assist in meeting the housing needs of Native Hawaiians; we also support programs to allow Native Hawaiian ‘ohana to remain in Hawai‘i. Further, we urge the Subcommittee to extend self-determination to the Native Hawaiian people through consultation. We look forward to continuing to work with your offices for the betterment of Native Hawaiians and ensuring the federal government honors the trust responsibility owed to all Native Americans. If OHA can provide any additional information regarding the issues discussed, please contact Interim Washington, D.C. Bureau Chief Christiane Cardoza at [christianec@oha.org](mailto:christianec@oha.org).

‘O wau māua iho nei (Sincerely yours),



Carmen Hulu Lindsey, Chair  
Board of Trustees

SH:cc

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<sup>19</sup> OHA: *Disproportionate Spike in COVID-19 Cases in Native Hawaiian Communities*, MAUI NOW (Aug. 7, 2021), <https://mauinow.com/2021/08/07/oha-disproportionate-spike-in-covid-19-cases-in-native-hawaiian-communities/>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*