S. HRG. 106–753, PT. 1

NATIVE HAWAIIAN FEDERAL RECOGNITION

JOINT HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

AND THE

COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF
REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

S. 2899

TO EXPRESS THE POLICY OF THE UNITED STATES REGARDING THE UNITED STATES' RELATIONSHIP WITH NATIVE HAWAIIANS

AND

H.R. 4904

TO EXPRESS THE POLICY OF THE UNITED STATES REGARDING THE UNITED STATES' RELATIONSHIP WITH NATIVE HAWAIIANS, TO PROVIDE A PROCESS FOR THE REORGANIZATION OF A NATIVE HAWAIIAN GOVERNMENT AND THE RECOGNITION BY THE UNITED STATES OF THE NATIVE HAWAIIAN GOVERNMENT

AUGUST 28, 2000
HONOLULU, HI

Serial No. 106–98

PART 1

U.S. GOVERNMENT PRINTING OFFICE

67–869 CC WASHINGTON : 2001

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

COMMITTEE ON INDIAN AFFAIRS

BEN NIGHTHORSE CAMPBELL, Colorado, *Chairman*
DANIEL K. INOUYE, Hawaii, *Vice Chairman*

FRANK MURKOWSKI, Alaska
JOHN McCAIN, Arizona,
SLADE GORTON, Washington
PETE V. DOMENICI, New Mexico
CRAIG THOMAS, Wyoming
ORRIN G. HATCH, Utah
JAMES M. INHOFE, Oklahoma

KENT CONRAD, North Dakota
HARRY REID, Nevada
DANIEL K. AKAKA, Hawaii
PAUL WELLSTONE, Minnesota
BYRON L. DORGAN, North Dakota

PAUL MOOREHEAD *Majority Staff Director/Chief Counsel*
PATRICIA M. ZELL, *Minority Staff Director/Chief Counsel*

COMMITTEE ON RESOURCES

DON YOUNG, Alaska, *Chairman*

W.J. (BILLY) TAUZIN, Louisiana
JAMES V. HANSEN, Utah
JIM SAXTON, New Jersey
ELTON GALLEGLY, California
JOHN J. DUNCAN, JR., Tennessee
JOEL HEFLEY, Colorado
JOHN T. DOOLITTLE, California
WAYNE T. GILCHREST, Maryland
KEN CALVERT, California
RICHARD W. POMBO, California
BARBARA CUBIN, Wyoming
HELEN CHENOWETH-HAGE, Idaho
GEORGE P. RADANOVICH, California
WALTER B. JONES, JR., North Carolina
WILLIAM M. (MAC) THORNBERRY, Texas
CHRIS CANNON, Utah
KEVIN BRADY, Texas
JOHN PETERSON, Pennsylvania
RICK HILL, Montana
BOB SCHAFFER, Colorado
JIM GIBBONS, Nevada
MARK E. SOUDER, Indiana
GREG WALDEN, Oregon
DON SHERWOOD, Pennsylvania
ROBIN HAYES, North Carolina
MIKE SIMPSON, Idaho
THOMAS G. TANCREDO, Colorado

GEORGE MILLER, California
NICK J. RAHALL, II, West Virginia
EDWARD J. MARKEY, Massachusetts
BRUCE F. VENTO, Minnesota
DALE E. KILDEE, Michigan
PETER A. DEFAZIO, Oregon
ENI F.H. FALEOMAVAEGA, American Samoa
NEIL ABERCROMBIE, Hawaii
SOLOMON P. ORTIZ, Texas
OWEN B. PICKETT, Virginia
FRANK PALLONE, JR., New Jersey
CALVIN M. DOOLEY, California
CARLOS A. ROMERO-BARCELO, Puerto Rico
ROBERT A. UNDERWOOD, Guam
PATRICK J. KENNEDY, Rhode Island
ADAM SMITH, Washington
CHRIS JOHN, Louisiana
DONNA MC CHRISTESEN, Virgin Islands
RON KIND, Wisconsin
JAY INSLEE, Washington
GRACE F. NAPOLITANO, California
TOM UDALL, New Mexico
MARK UDALL, Colorado
JOSEPH CROWLEY, New York
RUSH D. HOLT, New Jersey

LLOYD A. JONES, *Chief of Staff*
ELIZABETH MEGGINSON, *Chief Counsel*
CHRISTINE KENNEDY, *Chief Clerk/Administrator*
JOHN LAWRENCE, *Democratic Staff Director*

CONTENTS

	Page
S. 2899 and H.R. 4904, text of	4
Statements:	
Abercrombie, Hon. Neil, U.S. Representative from Hawaii	74
Agtuca, Jacqueline, acting director, Office of Tribal Justice, Department of Justice	84
Akaka, Hon. Daniel K., U.S. Senator from Hawaii	74
Anderson, Bob, counselor to the secretary, Department of the Interior	81
Cutcher, Kawika,	111
Danner, Jade	106
Danner, Robin J. Puanani	101
Denson, David	122
Faleomavaega, Hon. Eni F.H., U.S. Delegate, American Samoa	78
Fernandez, William J., judge [retired]	114
Fyfe, Kai'opua	109
Inouye, Hon. Daniel K., U.S. Senator from Hawaii, vice chairman, Committee on Indian Affairs	2
Kauihama, Keohokui	108
Kekahu, Butch	121
Keawe-Kaleikini, Arthur	117
Mahuiki-Denson, Leiliwin	118
Manini, Joseph Punilei, Sr.	113
Mink, Hon. Patsy T., U.S. Representative from Hawaii	77
Pa, Kekane	103
Pa, Robert A'ole	125
Smith, Kamealoha, on behalf of his father, Henry E. Smith, Jr	116
Wichman, Chipper	120

APPENDIX

Prepared statements:	
Agtuca, Jacqueline	139
Anderson, Bob	134
Anoatubby, Bill, Governor, Chickasaw Nation	129
Cutcher, Kawika,	130
Danner, Jade Leialoha (with attachment)	150
Danner, Robin J. Puanani	148
Fernandez, William J.	131
Fyfe, Kai'opua	157
Hee, Clayton, chairman, Board of Trustees, Office of Hawaiian Affairs	225
Kauihama, Keohokui (with attachment)	155
Mahuiki-Denson, Leiliwin (with attachment)	209
Manini, Joseph Punilei, Sr.	173
Pa, Kekane (with attachments)	160
Pa, Robert A'ole	222
Smith, Henry E., Jr.	133
Wichman, Chipper	220
Additional material submitted for the record:	
Grey, Lance, acting vice president, Pima-Maricopa Indian Community, letter	230
Pa, Eugene K., letter with attachment	231

Note: Other material submitted for the record are retained in committee files.

NATIVE HAWAIIAN FEDERAL RECOGNITION

MONDAY, AUGUST 28, 2000

U.S. SENATE, COMMITTEE ON INDIAN AFFAIRS, MEETING JOINTLY WITH THE COMMITTEE ON RESOURCES, U.S. HOUSE OF REPRESENTATIVES,

Honolulu, HI

The committee met, pursuant to notice, at 8 a.m. at the Neil Blaisdell Center, 777 Ward Avenue, Honolulu, Oahu, HI, Hon. Daniel K. Inouye (vice chairman of the committe) presiding.

Present: Senators Inouye and Akaka: Representatives Mink and Abercrombie, and Delegate Faleomavaega.

Senator INOUYE. The hearing will come to order.

An opening prayer will be offered by Mr. Kaleo Patterson.

Mr. PATTERSON. Hello, everybody. Thank you for coming today. Thank you for who you are and the manao you have to share today. We want to thank those who have come from afar to hear some of the testimony this morning.

Let's pray. Let's ask God, the God of all people and the God of all creation, to be with us today to give us everything that we need to do the work that we are about. To continue this movement, this struggle, toward peace and justice, the healing of our land and our people today. [Remarks made in native tongue.] Join with me now in prayer.

[Prayer offered in native tongue.]

Mr. PATTERSON. And yes, God, we praise your name today. We thank you for the many, many blessings in life, for bringing us together this morning as friends and as families and as members of this community, the people of this land.

We thank you, oh God, for this day, this day of life and new beginnings. Also for the hearings that are about to take place today and in the days to come. For those who have come so far and have worked so hard to bring this week of hearings about, and those who have traveled from places like Kauai today to be here because they feel that their manao is so very important that it needs to be heard. They have come here this morning to share important things that we must hear and value in our hearts, and in our minds, and in the legislation that is being drafted. Lord, we ask that you would just make clean any impurity of thought or design, all of our hearts and minds today. That indeed we might have the new beginning that we desire, each and every day. Give us faith, hope and love today that indeed all the blessings of life would be ours. We continue to pray for the healing of this land and the peo-

ple of this land. And, today, this morning, people like Henry Smith who is in the hospital. We just ask that your healing spirit would continue to be with him and our Senator Akaka today, that your healing spirit would be in his body and in his spirit. And that your healing spirit would be with all of us; that truly justice and reconciliation would be ours. Faith, hope, and aloha be ours today. We ask it in your name of God.

[Prayer offered in native tongue.] Amen.

Senator INOUYE. Thank you very much, Mr. Patterson.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. Before proceeding I am certain that I speak for all assembled here to note our pleasure, to note the presence of Senator Akaka with us. We are so happy that he is here with us today.

By authority granted by the U.S. Senate and the U.S. House of Representatives, the Senate Committee on Indian Affairs and the House Committee on Resources convene this morning to receive testimony on two bills that have been introduced in the Senate and the House to provide a process for the recognition of a native Hawaiian governing body. If enacted into law, these bills would provide for a government-to-government relationship with the United States.

There are 556 native governments that are formally recognized by the United States and with whom the United States is engaged in government-to-government relations. There are another 160 native groups that are currently petitioning the United States for recognition as governments. The recognition by the United States is recognition of the sovereignty of those native governments and their rights as governments to exercise governmental authorities, including their fundamental rights of self-determination and self-governance.

It is within this context that the measures we are considering today have been proposed. The legislation would provide a process for the recognition of the sovereignty of the native Hawaiian people and their right to self-determination and self-governance. It will provide a basis for government-to-government relations with the United States, and would preserve and protect those Federal programs that are currently extended to native Hawaiians because of their status as native people of the United States. Programs such as health care, education, job training and employment opportunities, housing assistance, scholarships, language preservation, grave protection, and the repatriation of human remains and sacred objects of cultural patrimony.

As with other native governments, the recognition by the United States of the sovereignty of the native people of Hawaii does not alter the relationship the Federal Government has with any of the State governments, nor the citizens of those States. While these bills set forth a proposed process for the reorganization of a native Hawaiian governing body, these bills do not address how that government body might be composed. It could, for instance, be a governing body that is composed of governing entities from each of the islands; a confederation of governments, or it could take some other

form. We believe that these are matters that are best addressed by those who wish to voluntarily associate themselves with the native Hawaiian governing entity.

In a similar manner, we hope that those who want to participate in the process of forming a governing body will provide us with guidance on the formulation of the commission that would certify a citizenship or membership roll of native Hawaiians who have expressed their desire to be part of a process to form an interim governing council, develop and adopt organic governing documents, and thereafter, elect representatives to a native Hawaiian governing body. Because these bills, if enacted, would become part of the body of Federal law, the laws of the United States, these bills do not address, nor do they preclude, the relations and activities of native Hawaiians at international forums.

Today the committees are calling upon the citizens of Hawaii to provide us with their thoughts, their manao, on whether they support the passage of these measures, either as they are currently formulated or with amendments. These bills have been developed by native Hawaiians for native Hawaiians following extensive consultation not only with the native Hawaiian community, but also with representatives of other interested governments, Federal, State, and native governments. Ultimately, however, it is the people of Hawaii who will decide whether these measures should be enacted into law.

As the elected representatives of all of the citizens of Hawaii we await your guidance.

[Text of S. 2899 and H.R. 4904 follow:]

II

106TH CONGRESS
2D SESSION

S. 2899

To express the policy of the United States regarding the United States' relationship with Native Hawaiians, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2000

Mr. AKAKA (for himself and Mr. INOUYE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To express the policy of the United States regarding the United States' relationship with Native Hawaiians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds that—

(1) the Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States;

(2) Native Hawaiians, the native people of the State of Hawaii are indigenous, native people of the United States;

1 (3) the United States has a special trust rela-
2 tionship to promote the welfare of the native people
3 of the United States, including Native Hawaiians;
4 (4) under the treaty-making power of the
5 United States, Congress exercised its constitutional
6 authority to confirm a treaty between the United
7 States and the government that represented the Ha-
8 waiian people, and from 1826 until 1893, the United
9 States recognized the independence of the Kingdom
10 of Hawaii, extended full diplomatic recognition to
11 the Hawaiian Government, and entered into treaties
12 and conventions with the Hawaiian monarchs to gov-
13 ern commerce and navigation in 1826, 1842, 1849,
14 1875, and 1887;
15 (5) pursuant to the provisions of the Hawaiian
16 Homes Commission Act, 1920 (42 Stat. 108, chap-
17 ter 42), the United States set aside 200,000 acres
18 of land in the Federal territory that later became
19 the State of Hawaii in order to establish a homeland
20 for the native people of Hawaii, Native Hawaiians;
21 (6) by setting aside 200,000 acres of land for
22 Native Hawaiian homesteads and farms, the Act as-
23 sists the Native Hawaiian community in maintaining
24 distinct native settlements throughout the State of
25 Hawaii;

(7) approximately 6,800 Native Hawaiian lessees and their family members reside on Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Home Lands are on a waiting list to receive assignments of land;

(8) the Hawaiian Home Lands continue to provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and Native Hawaiians have maintained other distinctly native areas in Hawaii;

(9) on November 23, 1993, Public Law 103–150 (107 Stat. 1510) (commonly known as the Apology Resolution) was enacted into law, extending an apology on behalf of the United States to the Native people of Hawaii for the United States' role in the overthrow of the Kingdom of Hawaii;

(10) the Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United

1 States, either through their monarchy or through a
2 plebiscite or referendum;
3 (11) the Apology Resolution expresses the com-
4 mitment of Congress and the President to acknowl-
5 edge the ramifications of the overthrow of the King-
6 dom of Hawaii and to support reconciliation efforts
7 between the United States and Native Hawaiians;
8 and to have Congress and the President, through the
9 President's designated officials, consult with Native
10 Hawaiians on the reconciliation process as called for
11 under the Apology Resolution;
12 (12) despite the overthrow of the Hawaiian gov-
13 ernment, Native Hawaiians have continued to main-
14 tain their separate identity as a distinct native com-
15 munity through the formation of cultural, social, and
16 political institutions, and to give expression to their
17 rights as native people to self-determination and
18 self-governance as evidenced through their participa-
19 tion in the Office of Hawaiian Affairs;
20 (13) Native Hawaiians also maintain a distinct
21 Native Hawaiian community through the provision
22 of governmental services to Native Hawaiians, in-
23 cluding the provision of health care services, edu-
24 cational programs, employment and training pro-
25 grams, children's services, conservation programs,

1 fish and wildlife protection, agricultural programs,
2 native language immersion programs and native lan-
3 guage immersion schools from kindergarten through
4 high school, as well as college and master's degree
5 programs in native language immersion instruction,
6 and traditional justice programs, and by continuing
7 their efforts to enhance Native Hawaiian self-deter-
8 mination and local control;

9 (14) Native Hawaiians are actively engaged in
10 Native Hawaiian cultural practices, traditional agri-
11 cultural methods, fishing and subsistence practices,
12 maintenance of cultural use areas and sacred sites,
13 protection of burial sites, and the exercise of their
14 traditional rights to gather medicinal plants and
15 herbs, and food sources;

16 (15) the Native Hawaiian people wish to pre-
17 serve, develop, and transmit to future Native Hawai-
18 ian generations their ancestral lands and Native Ha-
19 waiian political and cultural identity in accordance
20 with their traditions, beliefs, customs and practices,
21 language, and social and political institutions, and to
22 achieve greater self-determination over their own af-
23 fairs;

24 (16) this Act responds to the desire of the Na-
25 tive Hawaiian people for enhanced self-determination

1 by establishing a process within the framework of
2 Federal law for the Native Hawaiian people to exer-
3 cise their inherent rights as a distinct aboriginal, in-
4 digenous, native community to reorganize a Native
5 Hawaiian governing body for the purpose of giving
6 expression to their rights as native people to self-de-
7 termination and self-governance;
8 (17) the United States has declared that—
9 (A) the United States has a special respon-
10 sibility for the welfare of the native peoples of
11 the United States, including Native Hawaiians;
12 (B) Congress has identified Native Hawai-
13 ians as a distinct indigenous group within the
14 scope of its Indian affairs power, and has en-
15 acted dozens of statutes on their behalf pursu-
16 ant to its recognized trust responsibility; and
17 (C) Congress has also delegated broad au-
18 thority to administer a portion of the federal
19 trust responsibility to the State of Hawaii;
20 (18) the United States has recognized and re-
21 affirmed the special trust relationship with the Na-
22 tive Hawaiian people through—
23 (A) the enactment of the Act entitled "An
24 Act to provide for the admission of the State of

1 Hawaii into the Union", approved March 18,
2 1959 (Public Law 86–3; 73 Stat. 4) by—
3 (i) ceding to the State of Hawaii title
4 to the public lands formerly held by the
5 United States, and mandating that those
6 lands be held in public trust for the better-
7 ment of the conditions of Native Hawai-
8 ians; and
9 (ii) transferring the United States' re-
10 sponsibility for the administration of the
11 Hawaiian Home Lands to the State of Ha-
12 waii, but retaining the authority to enforce
13 the trust, including the exclusive right of
14 the United States to consent to any actions
15 affecting the lands which comprise the cor-
16 pus of the trust and any amendments to
17 the Hawaiian Homes Commission Act,
18 1920 (42 Stat. 108, chapter 42) that are
19 enacted by the legislature of the State of
20 Hawaii affecting the beneficiaries under
21 the Act;
22 (19) the United States continually has recog-
23 nized and reaffirmed that—
24 (A) Native Hawaiians have a cultural, his-
25 toric, and land-based link to the aboriginal, na-

1 tive people who exercised sovereignty over the
2 Hawaiian Islands;
3 (B) Native Hawaiians have never relin-
4 quished their claims to sovereignty or their sov-
5 ereign lands;
6 (C) the United States extends services to
7 Native Hawaiians because of their unique sta-
8 tus as the aboriginal, native people of a once
9 sovereign nation with whom the United States
10 has a political and legal relationship; and
11 (D) the special trust relationship of Amer-
12 ican Indians, Alaska Natives, and Native Ha-
13 waiians to the United States arises out of their
14 status as aboriginal, indigenous, native people
15 of the United States.

16 **SEC. 2. DEFINITIONS.**

17 In this Act:
18 (1) ABORIGINAL, INDIGENOUS, NATIVE PEO-
19 PLE.—The term "aboriginal, indigenous, native peo-
20 ple" means those people whom Congress has recog-
21 nized as the original inhabitants of the lands and
22 who exercised sovereignty prior to European contact
23 in the areas that later became part of the United
24 States;

1 (2) ADULT MEMBERS.—The term "adult mem-
2 bers" means those Native Hawaiians who have at-
3 tained the age of 18 at the time the Secretary pub-
4 lishes the initial roll in the Federal Register, as pro-
5 vided in section 7(a)(4) of this Act.
6 (3) APOLOGY RESOLUTION.—The term "Apol-
7 ogy Resolution" means Public Law 103–150 (107
8 Stat. 1510), a joint resolution offering an apology to
9 Native Hawaiians on behalf of the United States for
10 the participation of agents of the United States in
11 the January 17, 1893 overthrow of the Kingdom of
12 Hawaii.
13 (4) COMMISSION.—The term "Commission"
14 means the commission established in section 7 of
15 this Act to certify that the adult members of the Na-
16 tive Hawaiian community contained on the roll de-
17 veloped under that section meet the definition of Na-
18 tive Hawaiian, as defined in paragraph (6)(A).
19 (5) INDIGENOUS, NATIVE PEOPLE.—The term
20 "indigenous, native people" means the lineal de-
21 scendants of the aboriginal, indigenous, native peo-
22 ple of the United States.
23 (6) NATIVE HAWAIIAN.—
24 (A) Prior to the recognition by the United
25 States of a Native Hawaiian governing body

1 under the authority of section 7(d) of this Act,
2 the term "Native Hawaiian" means the indige-
3 nous, native people of Hawaii who are the lineal
4 descendants of the aboriginal, indigenous, na-
5 tive people who resided in the islands that now
6 comprise the State of Hawaii on January 1,
7 1893, and who occupied and exercised sov-
8 ereignty in the Hawaiian archipelago, including
9 the area that now constitutes the State of Ha-
10 waii, as evidenced by (but not limited to)—
11 (i) genealogical records;
12 (ii) Native Hawaiian kupuna (elders)
13 verification or affidavits;
14 (iii) church or census records; or
15 (iv) government birth or death certifi-
16 cates or other vital statistics records;
17 (B) Following the recognition by the
18 United States of the Native Hawaiian govern-
19 ing body under section 7(d) of this Act, the
20 term "Native Hawaiian" shall have the mean-
21 ing given to such term in the organic governing
22 documents of the Native Hawaiian governing
23 body.
24 (7) NATIVE HAWAIIAN GOVERNING BODY.—The
25 term "Native Hawaiian governing body" means the

1 adult members of the governing body of the Native
2 Hawaiian people that is recognized by the United
3 States under the authority of section 7(d) of this
4 Act.

5 (8) NATIVE HAWAIIAN INTERIM GOVERNING
6 COUNCIL.—The term "Native Hawaiian Interim
7 Governing Council" means the interim governing
8 council that is authorized to exercise the powers and
9 authorities recognized in section 7(b) of this Act.

10 (9) ROLL.—The term "roll" means the roll that
11 is developed under the authority of section 7(a) of
12 this Act.

13 (10) SECRETARY.—The term "Secretary"
14 means the Secretary of the Department of the Inte-
15 rior.

16 (11) TASK FORCE.—The term "Task Force"
17 means the Native Hawaiian Interagency Task Force
18 established under the authority of section 6 of this
19 Act.

20 **SEC. 3. UNITED STATES POLICY.**

21 The United States reaffirms that—

22 (1) Native Hawaiians are a unique and distinct
23 aboriginal, indigenous, native people, with whom the
24 United States has a political and legal relationship;

1 (2) the United States has a special trust rela-
2 tionship to promote the welfare of Native Hawaiians;
3 (3) Congress possesses the authority under the
4 Constitution to enact legislation to address the con-
5 ditions of Native Hawaiians and has exercised this
6 authority through the enactment of—
7 (A) the Hawaiian Homes Commission Act,
8 1920 (42 Stat. 108, chapter 42);
9 (B) the Act entitled "An Act to provide for
10 the admission of the State of Hawaii into the
11 Union", approved March 18, 1959 (Public Law
12 86–3; 73 Stat. 4); and
13 (C) more than 150 other Federal laws ad-
14 dressing the conditions of Native Hawaiians;
15 (4) Native Hawaiians have—
16 (A) an inherent right to autonomy in their
17 internal affairs;
18 (B) an inherent right of self-determination
19 and self-governance; and
20 (C) the right to reorganize a Native Ha-
21 waiian governing body; and
22 (5) the United States shall continue to engage
23 in a process of reconciliation and political relations
24 with the Native Hawaiian people.

1 **SEC. 4. ESTABLISHMENT OF THE OFFICE OF SPECIAL**
2 **TRUSTEE FOR NATIVE HAWAIIAN AFFAIRS.**

3 (a) IN GENERAL.—There is established within the
4 Office of the Secretary of the Department of the Interior
5 the Office of Special Trustee for Native Hawaiian Affairs.

6 (b) DUTIES OF THE OFFICE.—The Office of Special
7 Trustee for Native Hawaiian Affairs shall—

8 (1) effectuate and coordinate the special trust
9 relationship between the Native Hawaiian people
10 and the United States through the Secretary, and
11 with all other Federal agencies;

12 (2) upon the recognition of the Native Hawai-
13 ian governing body by the United States as provided
14 for in section 7(d) of this Act, effectuate and coordi-
15 nate the special trust relationship between the Na-
16 tive Hawaiian governing body and the United States
17 through the Secretary, and with all other Federal
18 agencies;

19 (3) fully integrate the principle and practice of
20 meaningful, regular, and appropriate consultation
21 with the Native Hawaiian people by providing timely
22 notice to, and consulting with the Native Hawaiian
23 people prior to taking any actions that may have the
24 potential to significantly or uniquely affect Native
25 Hawaiian resources, rights, or lands, and upon the
26 recognition of the Native Hawaiian governing body

1 as provided for in section 7(d) of this Act, fully inte-
2 grate the principle and practice of meaningful, regu-
3 lar, and appropriate consultation with the Native
4 Hawaiian governing body by providing timely notice
5 to, and consulting with the Native Hawaiian people
6 prior to taking any actions that may have the poten-
7 tial to significantly affect Native Hawaiian re-
8 sources, rights, or lands;
9 (4) consult with the Native Hawaiian Inter-
10 agency Task Force, other Federal agencies, and with
11 relevant agencies of the State of Hawaii on policies,
12 practices, and proposed actions affecting Native Ha-
13 waiian resources, rights, or lands;
14 (5) be responsible for the preparation and sub-
15 mittal to the Committee on Indian Affairs of the
16 Senate, the Committee on Energy and Natural Re-
17 sources of the Senate, and the Committee on Re-
18 sources of the House of Representatives of an an-
19 nual report detailing the activities of the Interagency
20 Task Force established under section 6 of this Act
21 that are undertaken with respect to the continuing
22 process of reconciliation and to effect meaningful
23 consultation with the Native Hawaiian people and
24 the Native Hawaiian governing body and providing
25 recommendations for any necessary changes to exist-

1 ing Federal statutes or regulations promulgated
2 under the authority of Federal law;
3 (6) be responsible for continuing the process of
4 reconciliation with the Native Hawaiian people, and
5 upon the recognition of the Native Hawaiian govern-
6 ing body by the United States as provided for in sec-
7 tion 7(d) of this Act, be responsible for continuing
8 the process of reconciliation with the Native Hawai-
9 ian governing body; and
10 (7) assist the Native Hawaiian people in facili-
11 tating a process for self-determination, including but
12 not limited to the provision of technical assistance in
13 the development of the roll under section 7(a) of this
14 Act, the organization of the Native Hawaiian In-
15 terim Governing Council as provided for in section
16 7(b) of this Act, and the reorganization of the Na-
17 tive Hawaiian governing body as provided for in sec-
18 tion 7(c) of this Act.

19 **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**
20 **RESENTATIVE.**

21 The Attorney General shall designate an appropriate
22 official within the Department of Justice to assist the Of-
23 fice of the Special Trustee for Native Hawaiian Affairs
24 in the implementation and protection of the rights of Na-
25 tive Hawaiians and their political and legal relationship

1 with the United States, and upon the recognition of the
2 Native Hawaiian governing body as provided for in section
3 7(d) of this Act, in the implementation and protection of
4 the rights of the Native Hawaiian governing body and its
5 political and legal relationship with the United States.

6 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.**

7 (a) ESTABLISHMENT.—There is established an inter-
8 agency task force to be known as the "Native Hawaiian
9 Interagency Task Force".

10 (b) COMPOSITION.—The Task Force shall be com-
11 posed of officials, to be appointed by the President,
12 from—

13 (1) each Federal agency that establishes or im-
14 plements policies that affect Native Hawaiians or
15 whose actions may significantly or uniquely impact
16 on Native Hawaiian resources, rights, or lands;

17 (2) the Office of the Special Trustee for Native
18 Hawaiian Affairs established under section 4 of this
19 Act; and

20 (3) the Executive Office of the President.

21 (c) LEAD AGENCIES.—The Department of the Inte-
22 rior and the Department of Justice shall serve as the lead
23 agencies of the Task Force, and meetings of the Task
24 Force shall be convened at the request of the lead agen-
25 cies.

1 (d) CO-CHAIRS.—The Task Force representative of
2 the Office of Special Trustee for Native Hawaiian Affairs
3 established under the authority of section 4 of this Act
4 and the Attorney General's designee under the authority
5 of section 5 of this Act shall serve as co-chairs of the Task
6 Force.

7 (e) DUTIES.—The primary responsibilities of the
8 Task Force shall be—

9 (1) the coordination of Federal policies that af-
10 fect Native Hawaiians or actions by any agency or
11 agencies of the Federal Government which may sig-
12 nificantly or uniquely impact on Native Hawaiian re-
13 sources, rights, or lands;

14 (2) to assure that each Federal agency develops
15 a policy on consultation with the Native Hawaiian
16 people, and upon recognition of the Native Hawaiian
17 governing body by the United States as provided in
18 section 7(d) of this Act, consultation with the Native
19 Hawaiian governing body; and

20 (3) to assure the participation of each Federal
21 agency in the development of the report to Congress
22 authorized in section 4(b)(5) of this Act.

1 **SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR**
2 **THE ORGANIZATION OF A NATIVE HAWAIIAN**
3 **INTERIM GOVERNING COUNCIL, FOR THE OR-**
4 **GANIZATION OF A NATIVE HAWAIIAN IN-**
5 **TERIM GOVERNING COUNCIL AND A NATIVE**
6 **HAWAIIAN GOVERNING BODY, AND FOR THE**
7 **RECOGNITION OF THE NATIVE HAWAIIAN**
8 **GOVERNING BODY.**

9 (a) ROLL.—

10 (1) PREPARATION OF ROLL.—The adult mem-
11 bers of the Native Hawaiian community who wish to
12 participate in the reorganization of a Native Hawai-
13 ian governing body shall prepare a roll for the pur-
14 pose of the organization of a Native Hawaiian In-
15 terim Governing Council. The roll shall include the
16 names of—

17 (A) the adult members of the Native Ha-
18 waiian community who wish to become mem-
19 bers of a Native Hawaiian governing body and
20 who are the lineal descendants of the aborigi-
21 nal, indigenous, native people who resided in
22 the islands that now comprise the State of Ha-
23 waii on January 1, 1893, and who occupied and
24 exercised sovereignty in the Hawaiian archipel-
25 ago, including the area that now constitutes the

1 State of Hawaii, as evidenced by (but not lim-
2 ited to)—
3 (i) genealogical records;
4 (ii) Native Hawaiian kupuna (elders)
5 verification or affidavits;
6 (iii) church or census records; or
7 (iv) government birth or death certifi-
8 cates or other vital statistics records; and
9 (B) the children of the adult members list-
10 ed on the roll prepared under this subsection.
11 (2) CERTIFICATION AND SUBMISSION.—
12 (A) COMMISSION.—There is authorized to
13 be established a Commission to be composed of
14 9 members for the purpose of certifying that
15 the adult members of the Native Hawaiian com-
16 munity on the roll meet the definition of Native
17 Hawaiian, as defined in section 2(6)(A) of this
18 Act. The members of the Commission shall have
19 expertise in the certification of Native Hawaiian
20 ancestry.
21 (B) CERTIFICATION.—The Commission
22 shall certify to the Secretary that the individ-
23 uals listed on the roll developed under the au-
24 thority of this subsection are Native Hawaiians,

1 as defined in section 2(6)(A) of this Act, and
2 shall submit such roll to the Secretary.
3 (3) NOTIFICATION.—The Commission shall
4 promptly provide notice to the Secretary if any of
5 the individuals listed on the roll should be removed
6 from the roll on account of death.
7 (4) PUBLICATION.—Within 45 days of the re-
8 ceipt by the Secretary of the roll developed under
9 the authority of this subsection and certified by the
10 Commission under the authority of paragraph (2),
11 the Secretary shall certify that the roll is consistent
12 with applicable Federal law by publishing the roll in
13 the Federal Register.
14 (5) EFFECT OF PUBLICATION.—The publication
15 of the roll developed under the authority of this sub-
16 section shall be for the purpose of providing any
17 member of the public with an opportunity to—
18 (A) petition the Secretary to add to the
19 roll the name of an individual who meets the
20 definition of Native Hawaiian, as defined in
21 section 2(6)(A) of this Act, and who is not list-
22 ed on the roll; or
23 (B) petition the Secretary to remove from
24 the roll the name of an individual who does not
25 meet such definition.

1 (6) DEADLINE FOR PETITIONS.—Any petition
2 described in paragraph (5) shall be filed with the
3 Secretary within 90 days of the date of the publica-
4 tion of the roll in the Federal Register, as author-
5 ized under paragraph (4).
6 (7) CERTIFICATION OF ADDITIONAL NATIVE
7 HAWAIIANS FOR INCLUSION ON THE ROLL.—
8 (A) SUBMISSION.—Within 30 days of re-
9 ceiving a petition to add the name of an individ-
10 ual to the roll, the Secretary shall submit the
11 name of each individual who is the subject of a
12 petition to add his or her name to the roll to
13 the Commission for certification that the indi-
14 vidual meets the definition of Native Hawaiian,
15 as defined in section 2(6)(A) of this Act.
16 (B) CERTIFICATION.—Within 30 days of
17 receiving a petition from the Secretary to have
18 a name added to or removed from the roll, the
19 Commission shall certify to the Secretary
20 that—
21 (i) the individual meets the definition
22 of Native Hawaiian, as defined in section
23 2(6)(A) of this Act; or

1 (ii) the individual does not meet the
2 definition of Native Hawaiian, as so de-
3 fined.
4 Upon such certification, the Secretary shall add
5 or remove the name of the individual on the
6 roll, as appropriate.
7 (8) HEARING.—
8 (A) IN GENERAL.—The Secretary shall
9 conduct a hearing on the record within 45 days
10 of the receipt by the Secretary of—
11 (i) a certification by the Commission
12 that an individual does not meet the defini-
13 tion of Native Hawaiian, as defined in sec-
14 tion 2(6)(A) of this Act; or
15 (ii) a petition to remove the name of
16 any individual listed on the roll submitted
17 to the Secretary by the Commission.
18 (B) TESTIMONY.—At the hearing con-
19 ducted in accordance with this paragraph, the
20 Secretary may receive testimony from the peti-
21 tioner, a representative of the Commission, the
22 individual whose name is the subject of the pe-
23 tition, and any other individuals who may have
24 the necessary expertise to provide the Secretary
25 with relevant information regarding whether the

1 individual whose name is the subject of a peti-
2 tion meets the definition of Native Hawaiian, as
3 defined in section 2(6)(A) of this Act.

4 (C) FINAL DETERMINATION.—Within 30
5 days of the date of the conclusion of the hear-
6 ing conducted in accordance with this para-
7 graph, the Secretary shall make a determina-
8 tion regarding whether the individual whose
9 name is the subject of a petition meets the defi-
10 nition of Native Hawaiian, as defined in section
11 2(6)(A) of this Act. Such a determination shall
12 be a final determination for purposes of judicial
13 review.

14 (9) JUDICIAL REVIEW.—

15 (A) FINAL JUDGMENT.—The United
16 States District Court for the District of Hawaii
17 shall have jurisdiction to review the record of
18 the decision developed by the Secretary and the
19 Secretary's final determination under para-
20 graph (8) and shall make a final judgment re-
21 garding such determination.

22 (B) NOTICE.—If the district court deter-
23 mines that an individual's name should be
24 added to the roll because that individual meets
25 the definition of Native Hawaiian, as defined in

1 section 2(6)(A) of this Act, or that an individ-
2 ual's name should be removed from the roll be-
3 cause that individual does not meet such defini-
4 tion, the district court shall so advise the Sec-
5 retary and the Secretary shall add or remove
6 the individual's name from the roll, consistent
7 with the instructions of the district court.
8 (10) PUBLICATION OF FINAL ROLL.—Except
9 for those petitions which remain the subject of judi-
10 cial review under the authority of paragraph (9), the
11 Secretary shall—
12 (A) publish a final roll in the Federal Reg-
13 ister within 290 days of the receipt by the Sec-
14 retary of the roll prepared under the authority
15 of paragraph (1); and
16 (B) subsequently publish in the Federal
17 Register the names of any individuals that the
18 district court directs be added or removed from
19 the roll.
20 (11) EFFECT OF PUBLICATION.—The publica-
21 tion of the final roll shall serve as the basis for the
22 eligibility of adult members listed on the roll to par-
23 ticipate in all referenda and elections associated with
24 the organization of a Native Hawaiian Interim Gov-
25 erning Council.

1 (b) ORGANIZATION OF THE NATIVE HAWAIIAN IN-
2 TERIM GOVERNING COUNCIL.—
3 (1) ORGANIZATION.—
4 (A) DATE OF GENERAL MEETING.—Within
5 90 days of the date of the publication of the
6 final roll in the Federal Register, the Secretary
7 shall announce the date of a general meeting of
8 the adult members of those listed on the roll to
9 nominate candidates from among the adult
10 members listed on the roll for election to the
11 Native Hawaiian Interim Governing Council.
12 The criteria for candidates to serve on the Na-
13 tive Hawaiian Interim Governing Council shall
14 be developed by the adult members listed on the
15 roll at the general meeting. The general meet-
16 ing may consist of meetings on each island or
17 at such sites as to secure the maximum partici-
18 pation of the adult members listed on the roll.
19 Such general meeting (or meetings) shall be
20 held within 30 days of the Secretary's an-
21 nouncement.
22 (B) ELECTION.—Within 45 days of the
23 general meeting (or meetings), the Secretary
24 shall assist the Native Hawaiian community in
25 holding an election by secret ballot (absentee

1 and mail balloting permitted), to elect the mem-
2 bership of the Native Hawaiian Interim Govern-
3 ing Council from among the nominees submit-
4 ted to the Secretary from the general meeting.
5 The ballots shall provide for write-in votes.
6 (C) APPROVAL.—The Secretary shall ap-
7 prove the Native Hawaiian Interim Governing
8 Council elected pursuant to this subsection if
9 the requirements of this section relating to the
10 nominating and election process have been met.
11 (2) POWERS.—
12 (A) IN GENERAL.—The Native Hawaiian
13 Interim Governing Council shall represent those
14 on the roll in the implementation of this Act
15 and shall have no powers other than those given
16 to it in accordance with this Act.
17 (B) TERMINATION.—The Native Hawaiian
18 Interim Governing Council shall have no power
19 or authority under this Act after the time which
20 the duly elected officers of the Native Hawaiian
21 governing body take office.
22 (3) DUTIES.—
23 (A) REFERENDUM.—The Native Hawaiian
24 Interim Governing Council shall conduct a ref-
25 erendum of the adult members listed on the roll

1 for the purpose of determining (but not limited
2 to) the following:
3 (i) The proposed elements of the or-
4 ganic governing documents of a Native
5 Hawaiian governing body.
6 (ii) The proposed powers and authori-
7 ties to be exercised by a Native Hawaiian
8 governing body, as well as the proposed
9 privileges and immunities of a Native Ha-
10 waiian governing body.
11 (iii) The proposed civil rights and pro-
12 tection of such rights of the members of a
13 Native Hawaiian governing body and all
14 persons subject to the authority of a Na-
15 tive Hawaiian governing body.
16 (B) DEVELOPMENT OF ORGANIC GOVERN-
17 ING DOCUMENTS.—Based upon the referendum
18 authorized in subparagraph (A), the Native Ha-
19 waiian Interim Governing Council shall develop
20 proposed organic governing documents for a
21 Native Hawaiian governing body.
22 (C) DISTRIBUTION.—The Council shall
23 distribute to all adult members of those listed
24 on the roll, a copy of the proposed organic gov-
25 erning documents, as drafted by the Native Ha-

1 waiian Interim Governing Council, along with a
2 brief impartial description of the proposed or-
3 ganic governing documents.
4 (D) CONSULTATION.—The Native Hawai-
5 ian Interim Governing Council shall freely con-
6 sult with those listed on the roll concerning the
7 text and description of the proposed organic
8 governing documents.
9 (4) ELECTIONS.—
10 (A) IN GENERAL.—Upon the request of
11 the Native Hawaiian Interim Governing Coun-
12 cil, the Secretary shall hold an election for the
13 purpose of ratifying the proposed organic gov-
14 erning documents. If the Secretary fails to act
15 within 45 days of the request by the Council,
16 the Council is authorized to conduct the elec-
17 tion.
18 (B) FAILURE TO ADOPT GOVERNING DOCU-
19 MENTS.—If the proposed organic governing
20 documents are not adopted by a majority vote
21 of the adult members listed on the roll, the Na-
22 tive Hawaiian Interim Governing Council shall
23 consult with the adult members listed on the
24 roll to determine which elements of the pro-
25 posed organic governing documents were found

1 to be unacceptable, and based upon such con-
2 sultation, the Council shall propose changes to
3 the proposed organic governing documents.
4 (C) ELECTION.—Upon the request of the
5 Native Hawaiian Interim Governing Council,
6 the Secretary shall hold a second election for
7 the purpose of ratifying the proposed organic
8 governing documents. If the Secretary fails to
9 act within 45 days of the request by the Coun-
10 cil, the Council is authorized to conduct the sec-
11 ond election.
12 (c) ORGANIZATION OF THE NATIVE HAWAIIAN GOV-
13 ERNING BODY.—
14 (1) RECOGNITION OF RIGHTS.—The right of
15 the Native Hawaiian governing body of the indige-
16 nous, native people of Hawaii to organize for its
17 common welfare, and to adopt appropriate organic
18 governing documents is hereby recognized by the
19 United States.
20 (2) RATIFICATION.—The organic governing
21 documents of the Native Hawaiian governing body
22 shall become effective when ratified by a majority
23 vote of the adult members listed on the roll, and ap-
24 proved by the Secretary upon the Secretary's deter-
25 mination that the organic governing documents are

1 consistent with applicable Federal law and the spe-
2 cial trust relationship between the United States and
3 its native people. If the Secretary fails to make such
4 a determination within 45 days of the ratification of
5 the organic governing documents by the adult mem-
6 bers listed on the roll, the organic governing docu-
7 ments shall be deemed to have been approved by the
8 Secretary.

9 (3) ELECTION OF GOVERNING OFFICERS.—
10 Within 45 days after the Secretary has approved the
11 organic governing documents or the organic govern-
12 ing documents are deemed approved, the Secretary
13 shall assist the Native Hawaiian Interim Governing
14 Council in holding an election by secret ballot for the
15 purpose of determining the individuals who will serve
16 as governing body officers as provided in the organic
17 governing documents.

18 (4) VOTING ELIGIBILITY.—For the purpose of
19 this initial election and notwithstanding any provi-
20 sion in the organic governing documents to the con-
21 trary, absentee balloting shall be permitted and all
22 adult members of the Native Hawaiian governing
23 body shall be entitled to vote in the election.

24 (5) FUTURE ELECTIONS.—All further elections
25 of governing body officers shall be conducted as pro-

1 vided for in the organic governing documents and
2 ordinances adopted in accordance with this Act.
3 (6) REVOCATION; RATIFICATION OF AMEND-
4 MENTS.—When ratified by a majority vote of the
5 adult members of those listed on the roll, the organic
6 governing documents shall be revocable by an elec-
7 tion open to the adult members of the Native Ha-
8 waiian governing body, and amendments to the or-
9 ganic governing documents may be ratified by the
10 same process.
11 (7) ADDITIONAL RIGHTS AND POWERS.—In ad-
12 dition to all powers vested in the Native Hawaiian
13 governing body by the duly ratified organic govern-
14 ing documents, the organic governing documents
15 shall also vest in the Native Hawaiian governing
16 body the rights and powers to—
17 (A) exercise those governmental authorities
18 that are recognized by the United States as the
19 powers and authorities that are exercised by
20 other governments representing the indigenous,
21 native people of the United States;
22 (B) provide for the protection of the civil
23 rights of the members of the Native Hawaiian
24 governing body and all persons subject to the
25 authority of the Native Hawaiian governing

1 body, and to assure that the Native Hawaiian
2 governing body exercises its authority consistent
3 with the requirements of section 202 of the Act
4 of April 11, 1968 (25 U.S.C. 1302);
5 (C) prevent the sale, disposition, lease, or
6 encumbrance of lands, interests in lands, or
7 other assets of the Native Hawaiian governing
8 body without the consent of the Native Hawai-
9 ian governing body;
10 (D) determine the membership in the Na-
11 tive Hawaiian governing body; and
12 (E) negotiate with Federal, State, and
13 local governments, and other entities.
14 (d) FEDERAL RECOGNITION.—
15 (1) RECOGNITION.—Notwithstanding any other
16 provision of law, upon the approval by the Secretary
17 of the organic governing documents of the Native
18 Hawaiian governing body and the election of officers
19 of the Native Hawaiian governing body, Federal rec-
20 ognition is hereby extended to the Native Hawaiian
21 governing body as the representative governing body
22 of the Native Hawaiian people.
23 (2) NO DIMINISHMENT OF RIGHTS OR PRIVI-
24 LEGES.—Nothing contained in this Act shall dimin-
25 ish, alter, or amend any existing rights or privileges

1 enjoyed by the Native Hawaiian people which are
2 not inconsistent with the provisions of this Act.
3 (e) INCORPORATION OF THE NATIVE HAWAIIAN GOV-
4 ERNING BODY.—
5 (1) CHARTER OF INCORPORATION.—Upon peti-
6 tion of the Native Hawaiian governing body, the
7 Secretary may issue a charter of incorporation to
8 the Native Hawaiian governing body. Upon the
9 issuance of such charter of incorporation, the Native
10 Hawaiian governing body shall have the same status
11 under Federal law when acting in its corporate ca-
12 pacity as the status of Indian tribes that have been
13 issued a charter of incorporation under the authority
14 of section 17 of the Indian Reorganization Act (25
15 U.S.C. 477).
16 (2) ENUMERATED POWERS.—Such charter may
17 authorize the incorporated Native Hawaiian govern-
18 ing body to exercise the power to purchase, take by
19 gift, bequest, or otherwise, own, hold, manage, oper-
20 ate, and dispose of property of every description,
21 real and personal, including the power to purchase
22 lands and to issue an exchange of interests in cor-
23 porate property, and such further powers as may be
24 incidental to the conduct of corporate business, and
25 that are not inconsistent with law.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated such sums as
3 may be necessary to carry out the activities authorized in
4 sections 4, 6, and 7 of this Act.

5 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
6 **THORITY; NEGOTIATIONS.**

7 (a) REAFFIRMATION.—The delegation by the United
8 States of authority to the State of Hawaii to address the
9 conditions of Native Hawaiians contained in the Act enti-
10 tled "An Act to provide for the admission of the State
11 of Hawaii into the Union" approved March 18, 1959
12 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

13 (b) NEGOTIATIONS.—Upon the Federal recognition
14 of the Native Hawaiian governing body pursuant to sec-
15 tion 7(d) of this Act, the United States is authorized to
16 negotiate and enter into an agreement with the State of
17 Hawaii and the Native Hawaiian governing body regard-
18 ing the transfer of lands, resources, and assets dedicated
19 to Native Hawaiian use under existing law as in effect
20 on the date of enactment of this Act to the Native Hawai-
21 ian governing body.

22 **SEC. 10. DISCLAIMER.**

23 Nothing in this Act is intended to serve as a settle-
24 ment of any claims against the United States.

1 **SEC. 11. REGULATIONS.**

2 The Secretary is authorized to make such rules and
3 regulations and such delegations of authority as the Sec-
4 retary deems necessary to carry out the provisions of this
5 Act.

6 **SEC. 12. SEVERABILITY.**

7 In the event that any section or provision of this Act,
8 or any amendment made by this Act is held invalid, it
9 is the intent of Congress that the remaining sections or
10 provisions of this Act, and the amendments made by this
11 Act, shall continue in full force and effect.

○

I

106TH CONGRESS
2D SESSION

H. R. 4904

To express the policy of the United States regarding the United States relationship with Native Hawaiians, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2000

Mr. ABERCROMBIE introduced the following bill; which was referred to the Committee on Resources

---

A BILL

To express the policy of the United States regarding the United States relationship with Native Hawaiians, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. FINDINGS.**
4 Congress finds that—
5 (1) the Constitution vests Congress with the au-
6 thority to address the conditions of the indigenous,
7 native people of the United States;
8 (2) Native Hawaiians, the native people of the
9 State of Hawaii are indigenous, native people of the
10 United States;

1 (3) the United States has a special trust rela-
2 tionship to promote the welfare of the native people
3 of the United States, including Native Hawaiians;
4 (4) under the treaty-making power of the
5 United States, Congress exercised its constitutional
6 authority to confirm a treaty between the United
7 States and the government that represented the Ha-
8 waiian people, and from 1826 until 1893, the United
9 States recognized the independence of the Kingdom
10 of Hawaii, extended full diplomatic recognition to
11 the Hawaiian Government, and entered into treaties
12 and conventions with the Hawaiian monarchs to gov-
13 ern commerce and navigation in 1826, 1842, 1849,
14 1875, and 1887;
15 (5) pursuant to the provisions of the Hawaiian
16 Homes Commission Act, 1920 (42 Stat. 108, chap-
17 ter 42), the United States set aside 200,000 acres
18 of land in the Federal territory that later became
19 the State of Hawaii in order to establish a homeland
20 for the native people of Hawaii, Native Hawaiians;
21 (6) by setting aside 200,000 acres of land for
22 Native Hawaiian homesteads and farms, the Act as-
23 sists the Native Hawaiian community in maintaining
24 distinct native settlements throughout the State of
25 Hawaii;

1 (7) approximately 6,800 Native Hawaiian les-
2 sees and their family members reside on Hawaiian
3 Home Lands and approximately 18,000 Native Ha-
4 waiians who are eligible to reside on the Home
5 Lands are on a waiting list to receive assignments
6 of land;
7 (8) the Hawaiian Home Lands continue to pro-
8 vide an important foundation for the ability of the
9 Native Hawaiian community to maintain the prac-
10 tice of Native Hawaiian culture, language, and tradi-
11 tions, and Native Hawaiians have maintained other
12 distinctly native areas in Hawaii;
13 (9) on November 23, 1993, Public Law 103–
14 150 (107 Stat. 1510) (commonly known as the Apol-
15 ogy Resolution) was enacted into law, extending an
16 apology on behalf of the United States to the Native
17 people of Hawaii for the United States role in the
18 overthrow of the Kingdom of Hawaii;
19 (10) the Apology Resolution acknowledges that
20 the overthrow of the Kingdom of Hawaii occurred
21 with the active participation of agents and citizens
22 of the United States and further acknowledges that
23 the Native Hawaiian people never directly relin-
24 quished their claims to their inherent sovereignty as
25 a people over their national lands to the United

1 States, either through their monarchy or through a
2 plebiscite or referendum;
3 (11) the Apology Resolution expresses the com-
4 mitment of Congress and the President to acknowl-
5 edge the ramifications of the overthrow of the King-
6 dom of Hawaii and to support reconciliation efforts
7 between the United States and Native Hawaiians;
8 and to have Congress and the President, through the
9 President's designated officials, consult with Native
10 Hawaiians on the reconciliation process as called for
11 under the Apology Resolution;
12 (12) despite the overthrow of the Hawaiian gov-
13 ernment, Native Hawaiians have continued to main-
14 tain their separate identity as a distinct native com-
15 munity through the formation of cultural, social, and
16 political institutions, and to give expression to their
17 rights as native people to self-determination and
18 self-governance as evidenced through their participa-
19 tion in the Office of Hawaiian Affairs;
20 (13) Native Hawaiians also maintain a distinct
21 Native Hawaiian community through the provision
22 of governmental services to Native Hawaiians, in-
23 cluding the provision of health care services, edu-
24 cational programs, employment and training pro-
25 grams, children's services, conservation programs,

1 fish and wildlife protection, agricultural programs,
2 native language immersion programs and native lan-
3 guage immersion schools from kindergarten through
4 high school, as well as college and master's degree
5 programs in native language immersion instruction,
6 and traditional justice programs, and by continuing
7 their efforts to enhance Native Hawaiian self-deter-
8 mination and local control;

9 (14) Native Hawaiians are actively engaged in
10 Native Hawaiian cultural practices, traditional agri-
11 cultural methods, fishing and subsistence practices,
12 maintenance of cultural use areas and sacred sites,
13 protection of burial sites, and the exercise of their
14 traditional rights to gather medicinal plants and
15 herbs, and food sources;

16 (15) the Native Hawaiian people wish to pre-
17 serve, develop, and transmit to future Native Hawai-
18 ian generations their ancestral lands and Native Ha-
19 waiian political and cultural identity in accordance
20 with their traditions, beliefs, customs and practices,
21 language, and social and political institutions, and to
22 achieve greater self-determination over their own af-
23 fairs;

24 (16) this Act responds to the desire of the Na-
25 tive Hawaiian people for enhanced self-determination

1 by establishing a process within the framework of
2 Federal law for the Native Hawaiian people to exer-
3 cise their inherent rights as a distinct aboriginal, in-
4 digenous, native community to reorganize a Native
5 Hawaiian governing body for the purpose of giving
6 expression to their rights as native people to self-de-
7 termination and self-governance;
8 (17) the United States has declared that—
9 (A) the United States has a special respon-
10 sibility for the welfare of the native peoples of
11 the United States, including Native Hawaiians;
12 (B) Congress has identified Native Hawai-
13 ians as a distinct indigenous group within the
14 scope of its Indian affairs power, and has en-
15 acted dozens of statutes on their behalf pursu-
16 ant to its recognized trust responsibility; and
17 (C) Congress has also delegated broad au-
18 thority to administer a portion of the federal
19 trust responsibility to the State of Hawaii;
20 (18) the United States has recognized and re-
21 affirmed the special trust relationship with the Na-
22 tive Hawaiian people through—
23 (A) the enactment of the Act entitled "An
24 Act to provide for the admission of the State of

1 Hawaii into the Union", approved March 18,
2 1959 (Public Law 86–3; 73 Stat. 4) by—
3 (i) ceding to the State of Hawaii title
4 to the public lands formerly held by the
5 United States, and mandating that those
6 lands be held in public trust for the better-
7 ment of the conditions of Native Hawai-
8 ians; and
9 (ii) transferring the United States re-
10 sponsibility for the administration of the
11 Hawaiian Home Lands to the State of Ha-
12 waii, but retaining the authority to enforce
13 the trust, including the exclusive right of
14 the United States to consent to any actions
15 affecting the lands which comprise the cor-
16 pus of the trust and any amendments to
17 the Hawaiian Homes Commission Act,
18 1920 (42 Stat. 108, chapter 42) that are
19 enacted by the legislature of the State of
20 Hawaii affecting the beneficiaries under
21 the Act;
22 (19) the United States continually has recog-
23 nized and reaffirmed that—
24 (A) Native Hawaiians have a cultural, his-
25 toric, and land-based link to the aboriginal, na-

1 tive people who exercised sovereignty over the
2 Hawaiian Islands;
3 (B) Native Hawaiians have never relin-
4 quished their claims to sovereignty or their sov-
5 ereign lands;
6 (C) the United States extends services to
7 Native Hawaiians because of their unique sta-
8 tus as the aboriginal, native people of a once
9 sovereign nation with whom the United States
10 has a political and legal relationship; and
11 (D) the special trust relationship of Amer-
12 ican Indians, Alaska Natives, and Native Ha-
13 waiians to the United States arises out of their
14 status as aboriginal, indigenous, native people
15 of the United States.

16 **SEC. 2. DEFINITIONS.**

17 In this Act:
18 (1) ABORIGINAL, INDIGENOUS, NATIVE PEO-
19 PLE.—The term "aboriginal, indigenous, native peo-
20 ple" means those people whom Congress has recog-
21 nized as the original inhabitants of the lands and
22 who exercised sovereignty prior to European contact
23 in the areas that later became part of the United
24 States;

1 (2) ADULT MEMBERS.—The term "adult mem-
2 bers" means those Native Hawaiians who have at-
3 tained the age of 18 at the time the Secretary pub-
4 lishes the initial roll in the Federal Register, as pro-
5 vided in section 7(a)(4) of this Act.

6 (3) APOLOGY RESOLUTION.—The term "Apol-
7 ogy Resolution" means Public Law 103–150 (107
8 Stat. 1510), a joint resolution offering an apology to
9 Native Hawaiians on behalf of the United States for
10 the participation of agents of the United States in
11 the January 17, 1893 overthrow of the Kingdom of
12 Hawaii.

13 (4) COMMISSION.—The term "Commission"
14 means the commission established in section 7 of
15 this Act to certify that the adult members of the Na-
16 tive Hawaiian community contained on the roll de-
17 veloped under that section meet the definition of Na-
18 tive Hawaiian, as defined in paragraph (6)(A).

19 (5) INDIGENOUS, NATIVE PEOPLE.—The term
20 "indigenous, native people" means the lineal de-
21 scendants of the aboriginal, indigenous, native peo-
22 ple of the United States.

23 (6) NATIVE HAWAIIAN.—

24 (A) Prior to the recognition by the United
25 States of a Native Hawaiian governing body

1 under the authority of section 7(d) of this Act,
2 the term "Native Hawaiian" means the indige-
3 nous, native people of Hawaii who are the lineal
4 descendants of the aboriginal, indigenous, na-
5 tive people who resided in the islands that now
6 comprise the State of Hawaii on January 1,
7 1893, and who occupied and exercised sov-
8 ereignty in the Hawaiian archipelago, including
9 the area that now constitutes the State of Ha-
10 waii, as evidenced by (but not limited to)—
11 (i) genealogical records;
12 (ii) Native Hawaiian kupuna (elders)
13 verification or affidavits;
14 (iii) church or census records; or
15 (iv) government birth or death certifi-
16 cates or other vital statistics records;
17 (B) Following the recognition by the
18 United States of the Native Hawaiian govern-
19 ing body under section 7(d) of this Act, the
20 term "Native Hawaiian" shall have the mean-
21 ing given to such term in the organic governing
22 documents of the Native Hawaiian governing
23 body.
24 (7) NATIVE HAWAIIAN GOVERNING BODY.—The
25 term "Native Hawaiian governing body" means the

1 adult members of the governing body of the Native
2 Hawaiian people that is recognized by the United
3 States under the authority of section 7(d) of this
4 Act.

5 (8) NATIVE HAWAIIAN INTERIM GOVERNING
6 COUNCIL.—The term "Native Hawaiian Interim
7 Governing Council" means the interim governing
8 council that is authorized to exercise the powers and
9 authorities recognized in section 7(b) of this Act.

10 (9) ROLL.—The term "roll" means the roll that
11 is developed under the authority of section 7(a) of
12 this Act.

13 (10) SECRETARY.—The term "Secretary"
14 means the Secretary of the Department of the Inte-
15 rior.

16 (11) TASK FORCE.—The term "Task Force"
17 means the Native Hawaiian Interagency Task Force
18 established under the authority of section 6 of this
19 Act.

20 **SEC. 3. UNITED STATES POLICY.**

21 The United States reaffirms that—

22 (1) Native Hawaiians are a unique and distinct
23 aboriginal, indigenous, native people, with whom the
24 United States has a political and legal relationship;

1 (2) the United States has a special trust rela-
2 tionship to promote the welfare of Native Hawaiians;
3 (3) Congress possesses the authority under the
4 Constitution to enact legislation to address the con-
5 ditions of Native Hawaiians and has exercised this
6 authority through the enactment of—
7 (A) the Hawaiian Homes Commission Act,
8 1920 (42 Stat. 108, chapter 42);
9 (B) the Act entitled "An Act to provide for
10 the admission of the State of Hawaii into the
11 Union", approved March 18, 1959 (Public Law
12 86–3; 73 Stat. 4); and
13 (C) more than 150 other Federal laws ad-
14 dressing the conditions of Native Hawaiians;
15 (4) Native Hawaiians have—
16 (A) an inherent right to autonomy in their
17 internal affairs;
18 (B) an inherent right of self-determination
19 and self-governance; and
20 (C) the right to reorganize a Native Ha-
21 waiian governing body; and
22 (5) the United States shall continue to engage
23 in a process of reconciliation and political relations
24 with the Native Hawaiian people.

1 **SEC. 4. ESTABLISHMENT OF THE OFFICE OF SPECIAL**
2 **TRUSTEE FOR NATIVE HAWAIIAN AFFAIRS.**
3 (a) IN GENERAL.—There is established within the
4 Office of the Secretary of the Department of the Interior
5 the Office of Special Trustee for Native Hawaiian Affairs.
6 (b) DUTIES OF THE OFFICE.—The Office of Special
7 Trustee for Native Hawaiian Affairs shall—
8 (1) effectuate and coordinate the special trust
9 relationship between the Native Hawaiian people
10 and the United States through the Secretary, and
11 with all other Federal agencies;
12 (2) upon the recognition of the Native Hawai-
13 ian governing body by the United States as provided
14 for in section 7(d) of this Act, effectuate and coordi-
15 nate the special trust relationship between the Na-
16 tive Hawaiian governing body and the United States
17 through the Secretary, and with all other Federal
18 agencies;
19 (3) fully integrate the principle and practice of
20 meaningful, regular, and appropriate consultation
21 with the Native Hawaiian people by providing timely
22 notice to, and consulting with the Native Hawaiian
23 people prior to taking any actions that may have the
24 potential to significantly or uniquely affect Native
25 Hawaiian resources, rights, or lands, and upon the
26 recognition of the Native Hawaiian governing body

1 as provided for in section 7(d) of this Act, fully inte-
2 grate the principle and practice of meaningful, regu-
3 lar, and appropriate consultation with the Native
4 Hawaiian governing body by providing timely notice
5 to, and consulting with the Native Hawaiian people
6 prior to taking any actions that may have the poten-
7 tial to significantly affect Native Hawaiian re-
8 sources, rights, or lands;
9 (4) consult with the Native Hawaiian Inter-
10 agency Task Force, other Federal agencies, and with
11 relevant agencies of the State of Hawaii on policies,
12 practices, and proposed actions affecting Native Ha-
13 waiian resources, rights, or lands;
14 (5) be responsible for the preparation and sub-
15 mittal to the Committee on Indian Affairs of the
16 Senate, the Committee on Energy and Natural Re-
17 sources of the Senate, and the Committee on Re-
18 sources of the House of Representatives of an an-
19 nual report detailing the activities of the Interagency
20 Task Force established under section 6 of this Act
21 that are undertaken with respect to the continuing
22 process of reconciliation and to effect meaningful
23 consultation with the Native Hawaiian people and
24 the Native Hawaiian governing body and providing
25 recommendations for any necessary changes to exist-

1 ing Federal statutes or regulations promulgated
2 under the authority of Federal law;
3 (6) be responsible for continuing the process of
4 reconciliation with the Native Hawaiian people, and
5 upon the recognition of the Native Hawaiian govern-
6 ing body by the United States as provided for in sec-
7 tion 7(d) of this Act, be responsible for continuing
8 the process of reconciliation with the Native Hawai-
9 ian governing body; and
10 (7) assist the Native Hawaiian people in facili-
11 tating a process for self-determination, including but
12 not limited to the provision of technical assistance in
13 the development of the roll under section 7(a) of this
14 Act, the organization of the Native Hawaiian In-
15 terim Governing Council as provided for in section
16 7(b) of this Act, and the reorganization of the Na-
17 tive Hawaiian governing body as provided for in sec-
18 tion 7(c) of this Act.

19 **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**
20 **RESENTATIVE.**

21 The Attorney General shall designate an appropriate
22 official within the Department of Justice to assist the Of-
23 fice of the Special Trustee for Native Hawaiian Affairs
24 in the implementation and protection of the rights of Na-
25 tive Hawaiians and their political and legal relationship

1 with the United States, and upon the recognition of the
2 Native Hawaiian governing body as provided for in section
3 7(d) of this Act, in the implementation and protection of
4 the rights of the Native Hawaiian governing body and its
5 political and legal relationship with the United States.

6 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.**

7 (a) ESTABLISHMENT.—There is established an inter-
8 agency task force to be known as the "Native Hawaiian
9 Interagency Task Force".

10 (b) COMPOSITION.—The Task Force shall be com-
11 posed of officials, to be appointed by the President,
12 from—

13 (1) each Federal agency that establishes or im-
14 plements policies that affect Native Hawaiians or
15 whose actions may significantly or uniquely impact
16 on Native Hawaiian resources, rights, or lands;

17 (2) the Office of the Special Trustee for Native
18 Hawaiian Affairs established under section 4 of this
19 Act; and

20 (3) the Executive Office of the President.

21 (c) LEAD AGENCIES.—The Department of the Inte-
22 rior and the Department of Justice shall serve as the lead
23 agencies of the Task Force, and meetings of the Task
24 Force shall be convened at the request of the lead agen-
25 cies.

1 (d) CO-CHAIRS.—The Task Force representative of
2 the Office of Special Trustee for Native Hawaiian Affairs
3 established under the authority of section 4 of this Act
4 and the Attorney General's designee under the authority
5 of section 5 of this Act shall serve as co-chairs of the Task
6 Force.

7 (e) DUTIES.—The primary responsibilities of the
8 Task Force shall be—

9 (1) the coordination of Federal policies that af-
10 fect Native Hawaiians or actions by any agency or
11 agencies of the Federal Government which may sig-
12 nificantly or uniquely impact on Native Hawaiian re-
13 sources, rights, or lands;

14 (2) to assure that each Federal agency develops
15 a policy on consultation with the Native Hawaiian
16 people, and upon recognition of the Native Hawaiian
17 governing body by the United States as provided in
18 section 7(d) of this Act, consultation with the Native
19 Hawaiian governing body; and

20 (3) to assure the participation of each Federal
21 agency in the development of the report to Congress
22 authorized in section 4(b)(5) of this Act.

1 **SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR**
2 **THE ORGANIZATION OF A NATIVE HAWAIIAN**
3 **INTERIM GOVERNING COUNCIL, FOR THE OR-**
4 **GANIZATION OF A NATIVE HAWAIIAN IN-**
5 **TERIM GOVERNING COUNCIL AND A NATIVE**
6 **HAWAIIAN GOVERNING BODY, AND FOR THE**
7 **RECOGNITION OF THE NATIVE HAWAIIAN**
8 **GOVERNING BODY.**
9 (a) ROLL.—
10 (1) PREPARATION OF ROLL.—The adult mem-
11 bers of the Native Hawaiian community who wish to
12 participate in the reorganization of a Native Hawai-
13 ian governing body shall prepare a roll for the pur-
14 pose of the organization of a Native Hawaiian In-
15 terim Governing Council. The roll shall include the
16 names of—
17 (A) the adult members of the Native Ha-
18 waiian community who wish to become mem-
19 bers of a Native Hawaiian governing body and
20 who are the lineal descendants of the aborigi-
21 nal, indigenous, native people who resided in
22 the islands that now comprise the State of Ha-
23 waii on January 1, 1893, and who occupied and
24 exercised sovereignty in the Hawaiian archipel-
25 ago, including the area that now constitutes the

1 State of Hawaii, as evidenced by (but not lim-
2 ited to)—
3 (i) genealogical records;
4 (ii) Native Hawaiian kupuna (elders)
5 verification or affidavits;
6 (iii) church or census records; or
7 (iv) government birth or death certifi-
8 cates or other vital statistics records; and
9 (B) the children of the adult members list-
10 ed on the roll prepared under this subsection.
11 (2) CERTIFICATION AND SUBMISSION.—
12 (A) COMMISSION.—There is authorized to
13 be established a Commission to be composed of
14 9 members for the purpose of certifying that
15 the adult members of the Native Hawaiian com-
16 munity on the roll meet the definition of Native
17 Hawaiian, as defined in section 2(6)(A) of this
18 Act. The members of the Commission shall have
19 expertise in the certification of Native Hawaiian
20 ancestry.
21 (B) CERTIFICATION.—The Commission
22 shall certify to the Secretary that the individ-
23 uals listed on the roll developed under the au-
24 thority of this subsection are Native Hawaiians,

1 as defined in section 2(6)(A) of this Act, and
2 shall submit such roll to the Secretary.
3 (3) NOTIFICATION.—The Commission shall
4 promptly provide notice to the Secretary if any of
5 the individuals listed on the roll should be removed
6 from the roll on account of death.
7 (4) PUBLICATION.—Within 45 days of the re-
8 ceipt by the Secretary of the roll developed under
9 the authority of this subsection and certified by the
10 Commission under the authority of paragraph (2),
11 the Secretary shall certify that the roll is consistent
12 with applicable Federal law by publishing the roll in
13 the Federal Register.
14 (5) EFFECT OF PUBLICATION.—The publication
15 of the roll developed under the authority of this sub-
16 section shall be for the purpose of providing any
17 member of the public with an opportunity to—
18 (A) petition the Secretary to add to the
19 roll the name of an individual who meets the
20 definition of Native Hawaiian, as defined in
21 section 2(6)(A) of this Act, and who is not list-
22 ed on the roll; or
23 (B) petition the Secretary to remove from
24 the roll the name of an individual who does not
25 meet such definition.

1 (6) DEADLINE FOR PETITIONS.—Any petition
2 described in paragraph (5) shall be filed with the
3 Secretary within 90 days of the date of the publica-
4 tion of the roll in the Federal Register, as author-
5 ized under paragraph (4).
6 (7) CERTIFICATION OF ADDITIONAL NATIVE
7 HAWAIIANS FOR INCLUSION ON THE ROLL.—
8 (A) SUBMISSION.—Within 30 days of re-
9 ceiving a petition to add the name of an individ-
10 ual to the roll, the Secretary shall submit the
11 name of each individual who is the subject of a
12 petition to add his or her name to the roll to
13 the Commission for certification that the indi-
14 vidual meets the definition of Native Hawaiian,
15 as defined in section 2(6)(A) of this Act.
16 (B) CERTIFICATION.—Within 30 days of
17 receiving a petition from the Secretary to have
18 a name added to or removed from the roll, the
19 Commission shall certify to the Secretary
20 that—
21 (i) the individual meets the definition
22 of Native Hawaiian, as defined in section
23 2(6)(A) of this Act; or

1 (ii) the individual does not meet the
2 definition of Native Hawaiian, as so de-
3 fined.
4 Upon such certification, the Secretary shall add
5 or remove the name of the individual on the
6 roll, as appropriate.
7 (8) HEARING.—
8 (A) IN GENERAL.—The Secretary shall
9 conduct a hearing on the record within 45 days
10 of the receipt by the Secretary of—
11 (i) a certification by the Commission
12 that an individual does not meet the defini-
13 tion of Native Hawaiian, as defined in sec-
14 tion 2(6)(A) of this Act; or
15 (ii) a petition to remove the name of
16 any individual listed on the roll submitted
17 to the Secretary by the Commission.
18 (B) TESTIMONY.—At the hearing con-
19 ducted in accordance with this paragraph, the
20 Secretary may receive testimony from the peti-
21 tioner, a representative of the Commission, the
22 individual whose name is the subject of the pe-
23 tition, and any other individuals who may have
24 the necessary expertise to provide the Secretary
25 with relevant information regarding whether the

1 individual whose name is the subject of a peti-
2 tion meets the definition of Native Hawaiian, as
3 defined in section 2(6)(A) of this Act.
4 (C) FINAL DETERMINATION.—Within 30
5 days of the date of the conclusion of the hear-
6 ing conducted in accordance with this para-
7 graph, the Secretary shall make a determina-
8 tion regarding whether the individual whose
9 name is the subject of a petition meets the defi-
10 nition of Native Hawaiian, as defined in section
11 2(6)(A) of this Act. Such a determination shall
12 be a final determination for purposes of judicial
13 review.
14 (9) JUDICIAL REVIEW.—
15 (A) FINAL JUDGMENT.—The United
16 States District Court for the District of Hawaii
17 shall have jurisdiction to review the record of
18 the decision developed by the Secretary and the
19 Secretary's final determination under para-
20 graph (8) and shall make a final judgment re-
21 garding such determination.
22 (B) NOTICE.—If the district court deter-
23 mines that an individual's name should be
24 added to the roll because that individual meets
25 the definition of Native Hawaiian, as defined in

1 section 2(6)(A) of this Act, or that an individ-
2 ual's name should be removed from the roll be-
3 cause that individual does not meet such defini-
4 tion, the district court shall so advise the Sec-
5 retary and the Secretary shall add or remove
6 the individual's name from the roll, consistent
7 with the instructions of the district court.

8 (10) PUBLICATION OF FINAL ROLL.—Except
9 for those petitions which remain the subject of judi-
10 cial review under the authority of paragraph (9), the
11 Secretary shall—

12 (A) publish a final roll in the Federal Reg-
13 ister within 290 days of the receipt by the Sec-
14 retary of the roll prepared under the authority
15 of paragraph (1); and

16 (B) subsequently publish in the Federal
17 Register the names of any individuals that the
18 district court directs be added or removed from
19 the roll.

20 (11) EFFECT OF PUBLICATION.—The publica-
21 tion of the final roll shall serve as the basis for the
22 eligibility of adult members listed on the roll to par-
23 ticipate in all referenda and elections associated with
24 the organization of a Native Hawaiian Interim Gov-
25 erning Council.

1 (b) ORGANIZATION OF THE NATIVE HAWAIIAN IN-
2 TERIM GOVERNING COUNCIL.—
3 (1) ORGANIZATION.—
4 (A) DATE OF GENERAL MEETING.—Within
5 90 days of the date of the publication of the
6 final roll in the Federal Register, the Secretary
7 shall announce the date of a general meeting of
8 the adult members of those listed on the roll to
9 nominate candidates from among the adult
10 members listed on the roll for election to the
11 Native Hawaiian Interim Governing Council.
12 The criteria for candidates to serve on the Na-
13 tive Hawaiian Interim Governing Council shall
14 be developed by the adult members listed on the
15 roll at the general meeting. The general meet-
16 ing may consist of meetings on each island or
17 at such sites as to secure the maximum partici-
18 pation of the adult members listed on the roll.
19 Such general meeting (or meetings) shall be
20 held within 30 days of the Secretary's an-
21 nouncement.
22 (B) ELECTION.—Within 45 days of the
23 general meeting (or meetings), the Secretary
24 shall assist the Native Hawaiian community in
25 holding an election by secret ballot (absentee

1 and mail balloting permitted), to elect the mem-
2 bership of the Native Hawaiian Interim Govern-
3 ing Council from among the nominees submit-
4 ted to the Secretary from the general meeting.
5 The ballots shall provide for write-in votes.
6 (C) APPROVAL.—The Secretary shall ap-
7 prove the Native Hawaiian Interim Governing
8 Council elected pursuant to this subsection if
9 the requirements of this section relating to the
10 nominating and election process have been met.
11 (2) POWERS.—
12 (A) IN GENERAL.—The Native Hawaiian
13 Interim Governing Council shall represent those
14 on the roll in the implementation of this Act
15 and shall have no powers other than those given
16 to it in accordance with this Act.
17 (B) TERMINATION.—The Native Hawaiian
18 Interim Governing Council shall have no power
19 or authority under this Act after the time which
20 the duly elected officers of the Native Hawaiian
21 governing body take office.
22 (3) DUTIES.—
23 (A) REFERENDUM.—The Native Hawaiian
24 Interim Governing Council shall conduct a ref-
25 erendum of the adult members listed on the roll

1 for the purpose of determining (but not limited
2 to) the following:
3 (i) The proposed elements of the or-
4 ganic governing documents of a Native
5 Hawaiian governing body.
6 (ii) The proposed powers and authori-
7 ties to be exercised by a Native Hawaiian
8 governing body, as well as the proposed
9 privileges and immunities of a Native Ha-
10 waiian governing body.
11 (iii) The proposed civil rights and pro-
12 tection of such rights of the members of a
13 Native Hawaiian governing body and all
14 persons subject to the authority of a Na-
15 tive Hawaiian governing body.
16 (B) DEVELOPMENT OF ORGANIC GOVERN-
17 ING DOCUMENTS.—Based upon the referendum
18 authorized in subparagraph (A), the Native Ha-
19 waiian Interim Governing Council shall develop
20 proposed organic governing documents for a
21 Native Hawaiian governing body.
22 (C) DISTRIBUTION.—The Council shall
23 distribute to all adult members of those listed
24 on the roll, a copy of the proposed organic gov-
25 erning documents, as drafted by the Native Ha-

1 waiian Interim Governing Council, along with a
2 brief impartial description of the proposed or-
3 ganic governing documents.
4 (D) CONSULTATION.—The Native Hawai-
5 ian Interim Governing Council shall freely con-
6 sult with those listed on the roll concerning the
7 text and description of the proposed organic
8 governing documents.
9 (4) ELECTIONS.—
10 (A) IN GENERAL.—Upon the request of
11 the Native Hawaiian Interim Governing Coun-
12 cil, the Secretary shall hold an election for the
13 purpose of ratifying the proposed organic gov-
14 erning documents. If the Secretary fails to act
15 within 45 days of the request by the Council,
16 the Council is authorized to conduct the elec-
17 tion.
18 (B) FAILURE TO ADOPT GOVERNING DOCU-
19 MENTS.—If the proposed organic governing
20 documents are not adopted by a majority vote
21 of the adult members listed on the roll, the Na-
22 tive Hawaiian Interim Governing Council shall
23 consult with the adult members listed on the
24 roll to determine which elements of the pro-
25 posed organic governing documents were found

1 to be unacceptable, and based upon such con-
2 sultation, the Council shall propose changes to
3 the proposed organic governing documents.
4 (C) ELECTION.—Upon the request of the
5 Native Hawaiian Interim Governing Council,
6 the Secretary shall hold a second election for
7 the purpose of ratifying the proposed organic
8 governing documents. If the Secretary fails to
9 act within 45 days of the request by the Coun-
10 cil, the Council is authorized to conduct the sec-
11 ond election.
12 (c) ORGANIZATION OF THE NATIVE HAWAIIAN GOV-
13 ERNING BODY.—
14 (1) RECOGNITION OF RIGHTS.—The right of
15 the Native Hawaiian governing body of the indige-
16 nous, native people of Hawaii to organize for its
17 common welfare, and to adopt appropriate organic
18 governing documents is hereby recognized by the
19 United States.
20 (2) RATIFICATION.—The organic governing
21 documents of the Native Hawaiian governing body
22 shall become effective when ratified by a majority
23 vote of the adult members listed on the roll, and ap-
24 proved by the Secretary upon the Secretary's deter-
25 mination that the organic governing documents are

1 consistent with applicable Federal law and the spe-
2 cial trust relationship between the United States and
3 its native people. If the Secretary fails to make such
4 a determination within 45 days of the ratification of
5 the organic governing documents by the adult mem-
6 bers listed on the roll, the organic governing docu-
7 ments shall be deemed to have been approved by the
8 Secretary.

9 (3) ELECTION OF GOVERNING OFFICERS.—
10 Within 45 days after the Secretary has approved the
11 organic governing documents or the organic govern-
12 ing documents are deemed approved, the Secretary
13 shall assist the Native Hawaiian Interim Governing
14 Council in holding an election by secret ballot for the
15 purpose of determining the individuals who will serve
16 as governing body officers as provided in the organic
17 governing documents.

18 (4) VOTING ELIGIBILITY.—For the purpose of
19 this initial election and notwithstanding any provi-
20 sion in the organic governing documents to the con-
21 trary, absentee balloting shall be permitted and all
22 adult members of the Native Hawaiian governing
23 body shall be entitled to vote in the election.

24 (5) FUTURE ELECTIONS.—All further elections
25 of governing body officers shall be conducted as pro-

1 vided for in the organic governing documents and
2 ordinances adopted in accordance with this Act.
3 (6) REVOCATION; RATIFICATION OF AMEND-
4 MENTS.—When ratified by a majority vote of the
5 adult members of those listed on the roll, the organic
6 governing documents shall be revocable by an elec-
7 tion open to the adult members of the Native Ha-
8 waiian governing body, and amendments to the or-
9 ganic governing documents may be ratified by the
10 same process.
11 (7) ADDITIONAL RIGHTS AND POWERS.—In ad-
12 dition to all powers vested in the Native Hawaiian
13 governing body by the duly ratified organic govern-
14 ing documents, the organic governing documents
15 shall also vest in the Native Hawaiian governing
16 body the rights and powers to—
17 (A) exercise those governmental authorities
18 that are recognized by the United States as the
19 powers and authorities that are exercised by
20 other governments representing the indigenous,
21 native people of the United States;
22 (B) provide for the protection of the civil
23 rights of the members of the Native Hawaiian
24 governing body and all persons subject to the
25 authority of the Native Hawaiian governing

1 body, and to assure that the Native Hawaiian
2 governing body exercises its authority consistent
3 with the requirements of section 202 of the Act
4 of April 11, 1968 (25 U.S.C. 1302);
5 (C) prevent the sale, disposition, lease, or
6 encumbrance of lands, interests in lands, or
7 other assets of the Native Hawaiian governing
8 body without the consent of the Native Hawai-
9 ian governing body;
10 (D) determine the membership in the Na-
11 tive Hawaiian governing body; and
12 (E) negotiate with Federal, State, and
13 local governments, and other entities.
14 (d) FEDERAL RECOGNITION.—
15 (1) RECOGNITION.—Notwithstanding any other
16 provision of law, upon the approval by the Secretary
17 of the organic governing documents of the Native
18 Hawaiian governing body and the election of officers
19 of the Native Hawaiian governing body, Federal rec-
20 ognition is hereby extended to the Native Hawaiian
21 governing body as the representative governing body
22 of the Native Hawaiian people.
23 (2) NO DIMINISHMENT OF RIGHTS OR PRIVI-
24 LEGES.—Nothing contained in this Act shall dimin-
25 ish, alter, or amend any existing rights or privileges

1 enjoyed by the Native Hawaiian people which are
2 not inconsistent with the provisions of this Act.
3 (e) INCORPORATION OF THE NATIVE HAWAIIAN GOV-
4 ERNING BODY.—
5 (1) CHARTER OF INCORPORATION.—Upon peti-
6 tion of the Native Hawaiian governing body, the
7 Secretary may issue a charter of incorporation to
8 the Native Hawaiian governing body. Upon the
9 issuance of such charter of incorporation, the Native
10 Hawaiian governing body shall have the same status
11 under Federal law when acting in its corporate ca-
12 pacity as the status of Indian tribes that have been
13 issued a charter of incorporation under the authority
14 of section 17 of the Indian Reorganization Act (25
15 U.S.C. 477).
16 (2) ENUMERATED POWERS.—Such charter may
17 authorize the incorporated Native Hawaiian govern-
18 ing body to exercise the power to purchase, take by
19 gift, bequest, or otherwise, own, hold, manage, oper-
20 ate, and dispose of property of every description,
21 real and personal, including the power to purchase
22 lands and to issue an exchange of interests in cor-
23 porate property, and such further powers as may be
24 incidental to the conduct of corporate business, and
25 that are not inconsistent with law.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated such sums as
3 may be necessary to carry out the activities authorized in
4 sections 4, 6, and 7 of this Act.

5 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
6 **THORITY; NEGOTIATIONS.**

7 (a) REAFFIRMATION.—The delegation by the United
8 States of authority to the State of Hawaii to address the
9 conditions of Native Hawaiians contained in the Act enti-
10 tled "An Act to provide for the admission of the State
11 of Hawaii into the Union" approved March 18, 1959
12 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

13 (b) NEGOTIATIONS.—Upon the Federal recognition
14 of the Native Hawaiian governing body pursuant to sec-
15 tion 7(d) of this Act, the United States is authorized to
16 negotiate and enter into an agreement with the State of
17 Hawaii and the Native Hawaiian governing body regard-
18 ing the transfer of lands, resources, and assets dedicated
19 to Native Hawaiian use under existing law as in effect
20 on the date of enactment of this Act to the Native Hawai-
21 ian governing body.

22 **SEC. 10. DISCLAIMER.**

23 Nothing in this Act is intended to serve as a settle-
24 ment of any claims against the United States.

1 **SEC. 11. REGULATIONS.**

2 The Secretary is authorized to make such rules and
3 regulations and such delegations of authority as the Sec-
4 retary deems necessary to carry out the provisions of this
5 Act.

6 **SEC. 12. SEVERABILITY.**

7 In the event that any section or provision of this Act,
8 or any amendment made by this Act is held invalid, it
9 is the intent of Congress that the remaining sections or
10 provisions of this Act, and the amendments made by this
11 Act, shall continue in full force and effect.

○

Senator INOUYE. It is now my pleasure to call upon the acting chairman of the House Committee on Resources, the Honorable Neil Abercrombie.

STATEMENT OF HON. NEIL ABERCROMBIE, U.S. REPRESENTATIVE FROM HAWAII

Mr. ABERCROMBIE. Thank you very much Senator. Aloha, good morning and aloha to all. I want to indicate, because there apparently has been some confusion, that this is, indeed, as Senator Inouye has indicated, an official hearing of the House Resources Committee. I am cochairing this hearing and am here at the express authority of Chairman Don Young. All proceedings here will not only be recorded and transcribed, but also sent to the Resources Committee for its consideration with respect to further consideration of this bill.

This bill was drafted in response to concerns raised by *Rice* v. *Cayetano.* It acknowledges a Federal trust relationship and responsibility for native Hawaiians. It recognizes native Hawaiians' right of self-governance as a native people, and it lays out a process for native Hawaiians to establish a structure of self-governance.

Ladies, gentlemen, and friends, decisions are going to be made, let that be absolutely clear. The time has come to turn to a conclusion and resolution of these issues. The bill addresses two pressing needs. We hope to eliminate all of the confusion and all of the side issues and discussions that have been taking place and focus on what this bill is all about. It one, will protect native Hawaiian programs, including Hawaiian homes, from court challenges from those who would deny or ignore unique historical circumstances that make these programs legitimate and necessary. Two, it provides a mechanism for native Hawaiians to organize and to establish a legal entity for self-governance as outlined by Senator Inouye.

The legislative language in this bill is not carved in stone. It is a starting point for discussion, a framework that will move us toward those goals. We are looking to the native Hawaiian community and others of good will for guidance in completing a final draft. We have scheduled congressional hearings in Hawaii during the period of August 28 to September 1 to get input from the communities so we can return to Washington with the results. I urge every Hawaiian, and everyone of good will, to attend these hearings or submit testimony and share his or her manao. Thank you very much, mahalo

Senator INOUYE. Thank you very much. And now it is my great pleasure to call upon the principal architect and the principal author of the measure before us, the Honorable Daniel Akaka.

STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

Senator AKAKA. Thank you very much Mr. Chairman and members of the committee. Aloha. [Greeting in native tongue.] [Response in native tongue.]

I would like to begin by thanking all of you who have traveled from the neighbor islands to come here to share your mana'o with us. I realize the change in the hearing schedule is sudden, and I

thank you for your understanding. I would also like to express my thanks to the committee members for agreeing to continue with the hearings on S. 2899 and H.R. 4904. While the news that I would not be able to travel to the neighbor islands was frustrating for me, I did not want it to affect this legislation. I thank the committee for not canceling the hearings and for allowing the Task Force on native Hawaiian Issues to continue moving forward to enact this significant measure.

In March 1999, Hawaii's congressional delegation formed the task force on native Hawaiian issues. I was given the honor of serving as the chairman of this important task force, and I want to say mahalo a nui loa, sincerely to Senator Inouye for the tremendous work he has done on this and also, Representative Neil Abercrombie and Representative Patsy Mink. Together the task force has moved this on a timeline, and we are on track. And so I want to sincerely thank them for their efforts.

We immediately made it our priority when we met as a task force to clarify the political relationship between native Hawaiians and the United States. As chairman, I wanted to ensure that our process involved the community at the very beginning of the process. For that reason we created five working groups to assist us. The members of these working groups have provided valuable insight and input, and I express my deep appreciation for their time and dedication to this important initiative.

I am pleased by the discussion this legislation has generated. It is only through addressing these concerns that we begin to resolve longstanding issues facing native Hawaiians. Resolving these issues will not be easy, will not be quick, and will not be painless. Our emotions about these issues run deep and are influenced greatly by those who have gone before us, our parents, our grandparents, our kupuna. The time has come, however, for us to address and resolve these issues so that we can begin to provide a better future for the children of Hawaii.

This, as you know, is an incremental process. This legislation is one more step in our journey toward a better future. This legislation addresses the Federal relationship only. It does not affect claims. It does not affect alternatives sought at the international level. It certainly does not resolve the issue of sovereignty. The legislation does, however, make it easier for the native Hawaiian community to deal with the issues of sovereignty, self-determination, and self-governance. It makes it easier because it provides for the reorganization of a native Hawaiian governing body for a government-to-government relationship with the United States. It provides a process for native Hawaiians to come together and to begin to address and resolve longstanding issues so that we can move forward as a people.

I have been asked; "Why should we have a government-to-government relationship?" My simplest answer is that the government-to-government relationship provides native Hawaiians with a seat at the table to provide input, to be consulted, and to participate in any Federal policies affecting native Hawaiians.

How is this relationship beneficial to native Hawaiians? A government-to-government relationship is beneficial because it provides native Hawaiians with increased control over local issues.

Right now native Hawaiians have very little control and hardly any opportunity for input with respect to Federal policies, which impact them. While native Hawaiians continue to have a unique and distinct community, with a recognized culture and tradition, native Hawaiians lack a governing entity through which they can interact with the Federal Government.

This legislation provides a process for the reorganization of the governing entity. This legislation provides for the empowerment of native Hawaiians through a government-to-government relationship with the Federal Government. This legislation clarifies the legal and political relationship, enforces the trust responsibility that the United States has with the native, aboriginal, indigenous people of Hawaii and recognizes native Hawaiians' right to self-determination.

There are some who have told me that this legislation is flawed because it does not reinstate the Kingdom of Hawaii, because it does not provide for total independence, or provide for reparations for native Hawaiians. As I have previously stated, this legislation addresses the Federal relationship between native Hawaiians and the United States. This legislation seeks to empower native Hawaiians through Federal recognition for a government-to-government relationship. The fact remains that Hawaii is a State. As such, the United States needs to fulfill its responsibility toward native Hawaiians as the native, aboriginal, indigenous, peoples of Hawaii. Federal recognition does not impact alternatives sought at the international level. Those pursuing alternatives at the international level will be able to continue their efforts. There is no reason native Hawaiians should not be able to pursue a better future within both the Federal and international context.

This legislation is also important to non-native Hawaiians. I have heard this legislation referred to as "race-based and divisive." I strongly disagree. Failing to address these issues is divisive. Ignoring these issues does not make them go away. The history of Hawaii includes these issues. We must begin to resolve them if we are going to move forward as a State. Native Hawaiians are the indigenous people of Hawaii, and, as such, have a special political and legal relationship with the United States. This legislation clarifies that political relationship. This legislation provides the next step in a long process toward resolving these longstanding issues. This legislation brings all of us together, native Hawaiians, Kanaka Maoli, and malihini. It does not pull us apart. We must not be afraid to move forward together.

I have been asked why we need to "rush" this legislation. I am actually surprised by this question. The political relationship between native Hawaiians and the United States has been a topic of discussion for many, many, many years. This is not the first time that Federal legislation has been drafted to address the issue. This is not a new issue. The political relationship between native Hawaiians and the United States goes to the heart of many of the longstanding issues facing native Hawaiians, including ceded lands and self-determination. We set an ambitious timetable for this legislation. I am pleased that we are on track with that timetable. With the support of the executive branch, we have a real oppor-

tunity to enact long-awaited legislation which will address long-standing issues and serve to empower native Hawaiians.

I now turn to you, the people of Hawaii, to share your mana'o on how we can make this legislation better. I look forward to your input, your mana'o, as we continue to move forward as a people and as a State to provide a better future for the children of Hawaii.

Mr. Chairman, thank you very much.

Senator INOUYE. Thank you very much Senator Akaka. And now it is my privilege to call upon the very distinguished and very senior member of the U.S. House of Representatives, the Honorable Patsy Mink.

STATEMENT OF HON. PATSY T. MINK, U.S. REPRESENTATIVE FROM HAWAII

Mrs. MINK. Thank you very much Senator Inouye and my colleague Neil Abercrombie as cochairs of this very, very important meeting. I think in my lifetime, other than the debate on statehood, this is probably the most crucial discussion that we will have about the status of the people of the State of Hawaii. It is extremely important that people take note of the seriousness of these deliberations. I am very happy that the task force determined that these hearings would be held in Hawaii, and that both Senator Inouye and Congressman Abercrombie, through their committees, have convened an official meeting to discuss this legislation. I've said on a number of previous occasions that I hope that these hearings will invite large numbers of native Hawaiian people to come to this forum to tell us what they think, how they see their own future, and how they interpret this legislation. I regret that due to Senator Akaka's surgery we're not able to travel to the neighbor islands. But with all the high-tech systems that are in operation, I hope that those who were intending to participate will find some way to communicate to this committee, send in their testimony, and make sure that their views are taken into consideration.

In a sense this has been a long time coming, but it has been accelerated by the decision of *Rice* v. *Cayetano*. It was a blow to all of us here in the State of Hawaii that a State constitutional provision setting forth the authority of native Hawaiians to construct an Office of Hawaiian Affairs, elect their own trustees, make their own determinations, and decide how to spend the moneys allocated to them, would be held unconstitutional because of the electoral process. That decision was based upon the fact that there was not a government-to-government entity that existed with respect to the tribal nations. And so we are here today to try to fix that, and it is a very difficult issue. I'm hoping that the testimony that we will receive, the comments that you will make, will help us to draft legislation which is fully in keeping with the wishes of the vast majority of the native Hawaiian population of this State. I look forward to the testimony and, Mr. Chairman, I would like to reserve to the end of that testimony my concluding remarks. Thank you very much.

Senator INOUYE. Without objection. And now it's my privilege to call upon the representative of American Samoa, the Honorable Eni F.H. Faleomavaega.

STATEMENT OF HON. ENI F.H. FALEOMAVAEGA, U.S. DELEGATE FROM AMERICAN SAMOA

Mr. FALEOMAVAEGA. Mr. Chairman, this is indeed a most momentous and important beginning of joint congressional hearings on the Native Hawaiians Recognition Bill. This morning I would be remiss if I did not express my deepest appreciation to you and to other members of Hawaii's congressional delegation, and the distinguished Senator Akaka, Congresswomen Patsy Mink, and Congressman Neil Abercrombie.

Some 13 years ago I landed on your shores. Then, at the invitation of the Polynesian Voyaging Society, and my deepest gratitude and appreciation to say now to the great navigator Ninoah Thomson, I was privileged and humbled to serve as a crewmember on the Hokule'a where we sailed from Tahiti to Hawaii.

I'm trying to offer a different perspective about this whole hearing process. It was at the park that we met, Mr. Chairman, and I was asked to give some sense of expressions on behalf of the Polynesian community, and those of us who are from different islands, from Hamoa, from Toma, from Tahiti. Some perspectives about what our Hawaiian cousins did, by building those Polynesian voyaging canoes and coming to our shores to find their roots. And to understand and appreciate what their culture was all about. As I recalled, the challenge that was offered, at least on behalf of our Polynesian community throughout the region, to the good people of Hawaii, was to treat the native Hawaiians well. They were not asking for handouts, they were only asking what was truly due them. Partly because I was raised here, in this Great State on the North Shore by my Hawaiian and Samoan kupunas in the villages, and as a graduate of Kahuku High School, I will never and could never forget that history and part of me. I want to thank you, Mr. Chairman for extending that invitation to those of us who serve as members of the House Resources Committee of the U.S. House of Representatives. It is in that capacity and spirit that I am here this morning to participate in these congressional hearings.

For the past 18 years I have had the opportunity of being exposed to the Federal legislative process, particularly as it pertains to native Americans and territorial issues. And, for the first time, in my humble opinion, in U.S. history, native Hawaiians are now being given this tremendous opportunity to seriously consider and determine their future. The distinguished Senator Akaka is now proposing this legislation.

Mr. Chairman, there are now some 1.2 million people living here in the State of Hawaii. For many born and raised here, all have had some understanding of the problems confronting the native Hawaiian community. However, for the malahini, or new-comers, who have taken up residence in Hawaii I make a special plea, that you keep an open mind and try to understand what has happened historically to the native Hawaiian people. The bottom line is, this is not a new issue. This has been an ongoing issue since 1810.

I want to thank you, Senator Akaka, for your leadership on this matter now before us. You and I are the only two members of the first established Polynesian Congressional Caucus. You are the chairman and I am the vice chairman, secretary and treasurer. [Laughter.]

I want to commend you on behalf of our Polynesian caucus, Senator Akaka. Senator Akaka, you have been in Congress since 1976. You served first as a Member of the U.S. House of Representatives, and now serve as the first U.S. Senator of Polynesian ancestry. You have rendered some 24 years of service to the people of Hawaii. In so doing you have exemplified your stature as a great leader. More than anything, I have respected you for demonstrating to the people of Hawaii, to the U.S. Congress, and to the world, the true meaning of the "aloha" spirit. When the storms rise and the tribulations come you're always there to provide the soothing balm of Gilead. You always look to solve problems through peaceful means, while many around look to add fuel to the fire. I am reminded of a statement in the Good Book. Po maikai ka poe uwao; no mea e iia lakou he poe keiki na ke akua. "Blessed are the peacemakers for they shall be called the children of God."

Thank you Mr. Chairman, Senator Inouye, for your leadership and your tireless service to the indigenous communities of the United States, especially to the native Americans, whose plight in so many instances and in so many ways parallel the plight of the native Hawaiians.

I do not believe that the people of Hawaii understand, or are aware enough of the fact that you alone, Senator Inouye, have single-handedly been the pivotal force underlying a greater commitment on the part of the U.S. Senate. A commitment to finally establish a Senate committee in regular standing that would specifically address the issues and problems affecting the native Americans throughout America.

When you really think about it, Members of Congress and U.S. Senators are usually driven to make decisions that reflect the interests of their constituencies and States. I do not know the exact number of native Americans living in the State of Hawaii, but I do know, and I want the people of Hawaii to know, that you Senator Inouye are highly revered and honored in every native American community throughout the United States. You are honored because of your tireless efforts to assist some 2.2 million native Americans living in the United States. I thank you for that commitment.

I serve as a Congressional Delegate from the U.S. Territory of American Samoa, representing some 65,000 Samoans living in Samoa and, indirectly, approximately 120,000 Samoans living in the State of Hawaii, and throughout the United States. It is interesting to note, Mr. Chairman, that my Hawaiian cousins refer to me as someone from Hamoa. I am curious to find out more about an ancient settlement of the Island of Maui, anciently called Hamoa. Even the entire coastline, commonly referred today as the Kona Coast, to my understanding was known anciently as the Hamoa Coast.

Mr. Chairman, I believe we share a common interest. One of our ancestors is a guy by the name of Tagaloa as known by the Samoans and Tongans, Tangaroa among.

The Maoris and Rarotongans, Taaroa among the Tahitians, and Kanaloa among the Hawaiians.

Some say Polynesian culture is approximately 3,000 years old. Some say we came from the east, some say we came from the west. Some say we're even members of the lost tribes of Israel. Some say

we're from the Red Sea. Some say we're from India, and the latest now is that we're from Taiwan. What is amazing, Mr. Chairman, is that the so-called experts in Polynesian culture have never bothered to ask the Polynesians where they came from. One noted anthropologist insulted a prominent Samoan chief by telling him that man is a descendant of monkeys and apes. The chief's response was that maybe western experts do descend from apes and monkeys, but according to Polynesian tradition our people are descendants of heavenly beings. I share this story with you because, fundamentally, I believe we are all one people. When we discuss the rights of native Hawaiians we, in effect, discuss the inalienable rights of any people.

More than 100 years ago ambitious descendants of missionaries and greedy business people aided by unauthorized and illegal use of U.S. forces, overthrew the Kingdom of Hawaii. There is no debate that, prior to its overthrow, Hawaii was a newly recognized sovereign nation. As a result of the overthrow, Hawaii became a Territory of the United States. In 1959, Hawaii became the 50th United States' State. It is the only U.S. State that was once a sovereign nation with its own ruling monarch.

Prince Kuhio, a descendant of royal Hawaiian ancestry, served as Hawaii's delegate to the U.S. Congress for some 20 years. As a result of his leadership, he caused to be passed the Hawaiian Homestead Commission Act, which was enacted in 1920. Prince Kuhio was very mindful and concerned about the economic and social plight of the native Hawaiian community. His sincere effort and thought was that, if native Hawaiians were provided parcels of land to homestead, they would be able to reap the bounty of their harvests, and in so doing would regain their dignity and sense of self-worth and self-esteem. Contrary to all that was intended, the native Hawaiians were left with the worst land while the best land was given to the descendants of these missionaries.

In 1980, Congress created the Native Hawaiian Study Commission to consider its past and present relationship with native Hawaiians. The Commission consisted of three Hawaiians and five appointees of former President Reagan and a business executive. The Commission found that, in 62 years only 3,100 homestead lands had been granted, and that well over 80 percent of the land set aside for native Hawaiians in 1921 was still unavailable to them by 1983.

The Native Hawaiian Study Commission then advised Congress even against reparations. I believe it is important, Mr. Chairman, to note for the record that the Commission divided on ethnic and political grounds. The mainland members appointed by President Reagan voted against the three Hawaiians. As a result, the Commission issued two reports. Very, very critical and important as far as documentation, fact, and evidence that was submitted as part of the workings of this Commission.

In February of this year the U.S. Supreme Court decided another matter in the case of *Rice* v. *Cayetano,* where the Supreme Court held that Hawaii's denial of Rice's right to vote the office of Foreign Affairs Trustee elections violates the 15th amendment. As a result of this ruling, in the 1983 Native Hawaiians Commission Report the members of the Hawaii delegation have now introduced the Na-

tive Hawaiian Recognition Bill to express the need for a clearer policy between the United States and its relationship with native Hawaiians.

What is paramount, Mr. Chairman, in these hearings, is whether or not the Congress, and especially the native Hawaiian community, and it is my sincere hope that there will be a sense of agreement, despite the opportunities that we will be hearing from all the cross-section and from the members of the Hawaiian community with their express ideas.

Differences there might be, but that's part of our process. That's the miracle of the democratic process. And everybody will be given an opportunity to be heard. Hopefully, with the terms of this act introduced for the purpose of establishing a process, we will have a beginning. That within the framework of the Federal law, it will give native Hawaiians this sense of sovereignty and provide a better sense of self-determination and self-governance.

In that spirit, Mr. Chairman, I sincerely hope that these hearings will be substantive to the extent that we will be hearing from the leaders and the members of our native Hawaiian community and from the good people of Hawaii. And that we do this in the most constructive fashion and hopefully, hopefully, that this will bear very well for the needs of native Hawaiians.

Thank you very much, Mr. Chairman, and again, my fondest aloha [statement in native language] to Senator Akaka for his quick recovery. Thank you.

Senator INOUYE. All right, thank you very much Congressman.

Before calling upon the official witnesses representing the Government of the United States may I introduce members seated at the panel.

From the left, Karen Sprecher-Keating, she serves as the associate solicitor for general law for the Department of the Interior. Next to her is Loretta Tuell, director, Office of Trust, Department of the Interior; next to Ms. Tuell is Bob Anderson, counselor to the secretary of the Department of the Interior; and next to Mr. Anderson is Jacqueline Agtuca, acting director, Office of Tribal Justice, Department of Justice; and next to Ms. Agtuca is John Hart, attorney in the Office of Tribal Justice, Department of Justice; and Debbie Hoho, Office of Legislative Affairs of the Department of Justice.

And now it is my privilege to call upon our first witness, the counselor to the secretary of the Department of the Interior, Bob Anderson.

STATEMENT OF BOB ANDERSON, COUNSELOR TO THE SECRETARY, DEPARTMENT OF THE INTERIOR

Mr. ANDERSON. Thank you, Senator Inouye, Representative Abercrombie, Senator Akaka, Representative Mink, and Representative Faleomavaega.

It's an honor to be here today to present testimony to you on behalf of the Secretary of the Interior and the Administration. Likewise it's an honor to have a chance to hear from, and speak to, native Hawaiians who live here or who have come from the other islands to participate in these hearings.

I've got a very brief statement to make today because I understand that there are some questions you'd like to ask and I want to make sure that we have plenty of time for them. Before I begin I just want to tell you that I work directly for Secretary Babbitt, and he frequently asks me to work on matters that are of special significance to him. This is one that he asked me to get involved in, I believe 6 or 7 months ago, when we had a large meeting at the Secretary's office. Since then, I have worked closely with the Justice Department, with Loretta and Karen, as well as John Berry, on finalizing the report that the Department of Justice and Department of the Interior published last week. I am very happy to be here on behalf of the Secretary who, incidentally Senator Akaka, sent his regards and wishes for a speedy recovery.

The most important point I want to make today is that the Administration supports the general purposes of this bill. We've got a few suggestions in our written testimony as to some modifications, many of which are of a housekeeping nature. But I do want to say right up front that we think this is a perfect and legal approach in terms of providing a basis for reorganization and recognition of a native Hawaiian political entity—one that would have a government-to-government relationship with the U.S. Government, consistent with the manner in which Indian tribes in the contiguous 48 States have been treated in terms of having that political government-to-government relationship, authorized under the Indian Commerce Clause of the constitution, and upheld with approval repeatedly in 200 years of Supreme Court decisions. So we think the approach is right on. We are pleased that the legislation is consistent with the findings that we made in the report that we issued last week, that native Hawaiian people should have self-determination over their own affairs within the framework of Federal law, and that's what this bill would do.

I listened carefully to all of your statements at the beginning and I found that many of the things you said were exactly what I had planned on saying here today. Therefore, I'm not going to belabor those points. The one statement that Senator Akaka made that really struck me was that, recognition of the sort provided in this legislation is the first step in ensuring that native Hawaiians have a seat at the table as one of the three sovereigns under the U.S. Constitution. These are Indian tribes, the United States, and States, in terms of being sovereign governments recognized and part of the Federal system.

I hope that when I slip into my lower 48 nomenclature of using the words "Indian tribes" that what I really mean is native Hawaiian self-governing body as you determine that that body should be shaped. So, I apologize in advance for my use of that phrase, it has just been ingrained in my mind through 20 years of practice.

We like the way in which the bills provide for acknowledgement of the political relationship through reorganization, and by providing that the interim governing body would have a provision for wide and ample participation by native Hawaiians throughout the State. We think that the sort of referenda that are provided for and the opportunity for voting on a constitution not once, but twice, also provides the opportunity for the voice of native Hawaiians to be heard in the process. Our lawyers, and folks in the bureaus who

work for the Secretary on acknowledgement matters regularly, and who look at membership rolls and draft constitutions and elections as a matter of course under the Indian Reorganization Act, have some concerns about the rapid turnaround in some of the timelines. I'll ask that we have some time to work with your staff on those to see if we might provide some modifications to some of those timelines. I think we need to discuss it. I'd like the opportunity to present some additional written testimony following the hearing, if that were okay.

We also have some concerns that the Justice Department will address regarding the membership definition for the interim governing council. The *Rice* v. *Cayetano* case is very problematic in the sense that the two concurring Justices voiced a lot of concern about the membership criteria the might be at issue. We have some suggestions as to how that membership criteria might be modified, with the limited purpose of setting up the interim governing council. We want to make it clear that, in many statutes that provide for the reorganization or recognition of tribes in the lower 48 States, congress sets up a somewhat more restrictive definition of membership based on a particular point in time where it is relatively easy to ascertain the members who might participate in the decisions regarding the reorganization. Following the reorganization, the tribe, or native Hawaiian government, would be free to shape the membership in its own constitution as it sees fit. It would not be bound by the definition set forth for the interim governing council. The Justice Department will address that in greater detail.

The written testimony that I submitted points out that there are a few hanging issues that we think need to be dealt with in the future. I'll just highlight a few of these before I take questions.

One is the issue of potential land claims that native Hawaiians might assert against the United States, the State, or third parties is something that probably needs to be addressed in the future in a public dialogue, and possibly through legislation. It's something that comes up frequently in the United States. We deal with land claims right now that cover large parts of Texas and upstate New York that trace their roots back to the 1800's, or the 1700's in some instances. Likewise, we think that the Federal Government's precise trust responsibility for any lands that might be transferred at some point to a native Hawaiian entity need to be addressed through public dialogue, and probably through legislation in the future.

The relationship of the native Hawaiian governing body and community in the State, and other local governments, in provisions of social services is something else that ought to be addressed through negotiations among those governments, first and foremost. And second, through legislation where appropriate, and where those governments choose to come together and come before Congress to deal with those issues.

I think that this legislation is necessary. I like the way Representative Abercrombie mentioned it, "To protect the existing programs that are in place"—the 150 statutes that Congress has already passed that some argue may violate the 14th amendment because of the lack of a government-to-government relationship. I

don't think that's true, but I think legislation like this would cement and buttress the arguments that those statutes are valid. And it is essential that legislation like this be passed quickly so that the Supreme Court, when it inevitably hears a case like that, will be informed that Congress recognizes the political government-to-government relationship that exists between the Federal Government and a native Hawaiian governing body and its membership.

I think that you need to have a legal entity in order to establish what is most important under Federal native American law purposes. That is not just that there is a descent from an indigenous group that pre-existed the establishment of the United States, but also that the group is composed of members who voluntarily associate with the Government and choose to be part of that Government. That's another important feature of this legislation, and it's a component that is critical.

With that I'll close and make myself available for any questions. Thank you.

[Prepared statement of Mr. Anderson appears in appendix.]

Senator INOUYE. Thank you very much Mr. Anderson. Before proceeding with the next witness may I assure all witnesses that the record will be kept open until September 9, 2000. If you wish to submit addendum, corrections, or additional testimony, feel free to do so. And may I also assure all witnesses that their prepared written statements will be made a part of the record in total.

And with that, may I now call upon Jacqueline Agtuca, the acting director of the Office of Tribal Justice, Department of Justice.

STATEMENT OF JACQUELINE AGTUCA, ACTING DIRECTOR, OFFICE OF TRIBAL JUSTICE, DEPARTMENT OF JUSTICE

Ms. AGTUCA. Thank you very much Vice Chairman Inouye, Senator Akaka, Representatives Abercrombie and Mink, and Delegate Faleomavaega. My name is Jacqueline Agtuca. I am the acting director of the Office of Tribal Justice in the Department of Justice.

I want to thank you for the opportunity to present views on S. 2899 and H.R. 4904. Senator Akaka has defined reconciliation to be a means for healing. The Department of Justice recognizes enactment of S. 2899 and H.R. 4904 as an important vehicle toward that end. Enactment of these bills will clarify the unique political and legal relationship that exists between the native Hawaiian people and the U.S. Government. It will provide within the context of Federal law a process for Federal recognition, self-determination and self-governance for native Hawaiian people.

The United States has a special trust relationship with native Hawaiian people firmly established over time by historical events. It is a history in which the United States' past dealings with the native Hawaiian people was less than honorable and that led to the suppression of the native Hawaiian government.

Historically the United States recognized the sovereignty of the Kingdom of Hawaii as evidenced by a number of treaties with them as sovereign. However, during the 1800's Americans gained control of most of Hawaii's commerce and began to dominate the Kingdom's political affairs. This domination eventually led to the illegal and unauthorized overthrow of the Kingdom of Hawaii, the instal-

lation of a provisional government, and later the declaration of a Republic; one that was contrary to the will of the native Hawaiian people. Subsequently, the United States later annexed Hawaii as a Territory and with this annexation came the transfer of nearly 1.8 million acres of crown and government land to the United States.

In response to the pleas of Hawaii's territorial representatives, who articulated the worsened conditions of the native Hawaiian people, Congress passed the Hawaiian Homes Commission Act, pursuant to its Indian Affairs powers bestowed under the Constitution of the United States, as a means of addressing its special trust relationship, and responsibility to, native Hawaiian people. Under the Hawaiian Home Commission Act, the United States set aside 200,000 acres of land in the Hawaiian territory for the native Hawaiian people, as defined by statute, for homestead purposes. This is a critical act by Congress utilizing its Indian Affairs powers that will serve native Hawaiian people now in this year.

In 1959 Hawaii was admitted as a State of the Union. As a requirement of admission into the Union the State was delegated the authority to administer the HHCA. Additionally, as another requirement of admission, the United States transferred 1.2 million acres of the ceded lands to the State to administer and use for five specific purposes, with one of the purposes being for the benefit of native Hawaiians. Again, it is very important to look to that piece of legislation that was enacted by Congress in 1921 to serve as guidance for what takes place in this bill and the future of the native Hawaiian people.

These historical events are the foundation of the Federal trust responsibility and the Federal trust relationship of the Hawaiian people and the U.S. Government. Throughout the history the native Hawaiian people never directly relinquished their claim to their inherent sovereignty as a people, or their claim over their national lands to the United States. The admission of Hawaii as a State did not alter the political relationship between the United States and the native Hawaiian people. Nor did it alter the Federal trust responsibility toward native Hawaiian people by the U.S. Government.

In 1993, due primarily to the great efforts of the Hawaiian delegation, specifically Senators Inouye and Akaka, Congress issued, and the President signed into law the Hawaiian Apology Resolution. The resolution acknowledged the 100th anniversary of the wrongful overthrow of the Kingdom of Hawaii and directed the President of the United States to engage in a reconciliation process with native Hawaiian people.

This hearing today is part of that process. In December of last year the Departments of Justice and Interior visited native Hawaiian sites and held a series of meetings with native Hawaiian people to discuss and promote reconciliation. Through these visits, the Justice Department and Department of the Interior delegations acknowledged the continuing, distinctly native, character and culture of the native Hawaiian people. Throughout these visits and meetings the delegation heard the clear call of the native Hawaiian people for increased control over their own affairs. The bills introduced by the Hawaiian delegation are an important step, a critical step,

in righting the wrongs committed by the United States. It is a critical step and a very serious step that we must take, and we firmly support the passage of this bill.

The bills are a significant part of the reconciliation process as outlined in the Apology Resolution. The bills are important because they clarify the unique political and legal relationship between the United States and the native Hawaiian community. And, because the native Hawaiian governmental leader or leaders, as set forth in the bills, would facilitate the government-to-government relationship in enabling the native Hawaiian leader or leaders to directly advocate for the native Hawaiian community. And, lastly, the bills create Federal vehicles for implementation and protection of native Hawaiian self-governance.

We support this legislation but would also like to offer several comments to the legislation. First, the bill's findings are important because they set forth the basic facts that native Hawaiian people are the indigenous people of Hawaii, that they continue to comprise a distinctly indigenous community, and that Congress may enact laws for native Hawaiians pursuant to the Indian affairs power.

Second, I would like to comment on the bill's definition of "native Hawaiian." An interim Federal definition is necessary at this point because the native Hawaiian governing body has not yet been reorganized. I cannot emphasize more strongly that the delegation and the community understand that this is an interim definition, one that will change based on the organic documents created by the governing body of the native Hawaiian people. And this interim Federal definition is very necessary for the operation of the legislation. We need a definition within the Federal law process for this period of time to implement the legislation.

However, we suggest an alternative definition to the one proposed in the bill. The definition that we propose as the interim definition is based on the definition set forth in the Hawaiian Homes Commission Act. We suggest that the definition in the current bills be changed to read as follows:

A native Hawaiian is any person (a)(i) who is eligible to hold Hawaiian Home Lands as a native Hawaiian directly or by devise under the Hawaiian Homes Commission Act, and (ii) who voluntarily affiliates with native Hawaiian people as a political community; or (b)(i) who is a lineal descendant of a native Hawaiian who is or was eligible to hold Hawaiian Home Lands directly or by devise under Public Law 67–34, 42 Stat. 108, as amended, and (ii) who is recognized by the native Hawaiian community as native Hawaiian, and (iii) who voluntarily affiliates with the native Hawaiian people as a political community.

Using this definition is very important for several reasons; first, the Hawaiian Homes Commission Act draws upon past practices of Congress' Indian Affairs power. Thus, the definition in the Hawaiian Homes Commission Act reflects an established Federal law process. And, second, the Hawaiian Homes Commission Act provides a definition that is tied to those native Hawaiians who are eligible to reside on distinctively native Hawaiian Lands and which can reasonably serve as a determiner of those native Hawaiians who maintain close ties to the native Hawaiian community. This body will determine the structure of the native Hawaiian governing body. And last, using the definition found in the Hawaiian Homes Commission Act better addresses the concerns raised by the Supreme Court in *Rice* v. *Cayetano.*

It is important to note that, for the purpose of this interim definition, that again, is to provide a means of implementing the proposed legislation that would establish an interim government, an interim governing body. And once that is accomplished, the native Hawaiian governing body will be free to determine its own membership as afforded indigenous native peoples across the United States as section 7(c), 7(d), of the bills expressly provide.

Finally, we fully support the bills provisions permitting the native Hawaiian community to determine the form and structure of the native Hawaiian government. This will permit the native Hawaiian community to reorganize into a government that addresses the important cultural concerns of the native Hawaiian community.

In closing, the Department supports this important legislation and is firmly committed to working with your committees and the native Hawaiian community toward fulfilling the goals of these bills which go toward furthering the reconciliation process. Ultimately, this process should result in Congressional confirmation of a political government-to-government relationship between native Hawaiians and the Federal Government, a relationship that would facilitate and safeguard the call of native Hawaiian people for self-governance. It also responds to the call of Queen Lili'uokalani upon abdicating her throne that the Federal Government correct the unauthorized actions of its representatives.

I again thank you for the opportunity to present on these bills and for the opportunity to express our support for self-determination of the native Hawaiian community.

[Prepared statement of Ms. Agtuca appears in appendix.]

Senator INOUYE. I thank you very much Director Agtuca. If I may I would like to now proceed with the questioning of Mr. Anderson.

In your opening remarks you indicated that the Department believes that the bills "appropriately affirm and acknowledge the political relationship between the United States and native Hawaiians." By that, do you mean that the bill as drafted would withstand any constitutional test?

Mr. ANDERSON. I believe it would. I think the fact that there was a native Hawaiian monarchy prior to the illegal annexation, that native Hawaiians constitute distinctly native communities, that there has been ample evidence in the report and in the findings about the nature of the political and cultural cohesiveness of native Hawaiians, that it fits neatly within the class of native governing bodies with which the United States has established a political government-to-government relationship, and that has been upheld numerous times by the U.S. Supreme Court.

Senator INOUYE. The phrase "government-to-government relationship" has been used on many, many occasions throughout this day, are there certain benefits that are associated with this relationship?

Mr. ANDERSON. Well, there are a number of benefits that are associated with this relationship. As I mentioned in my opening testimony, one of the three sovereigns mentioned in the U.S. Constitution, for example, a common attribute that native governments have is that they possess sovereign immunity from lawsuits. States, the United States, and Native American governing bodies

can't be sued without their consent. They have certain powers and authorities governing their members, notwithstanding the existence of a tribal land base, for example, the ability to govern domestic relations to deal with family relations, such as child custody, in ways that are most appropriate to Native American governing bodies. When the governing body of a Native American group is associated with a land base there are additional powers that go along with that. The power to tax, the power to regulate in the fashion that any other governing body might in terms of zoning or providing for criminal codes and conduct. And that, again, in cases where there is a land base. So there are lots of beneficial components that go along with that governing status.

Senator INOUYE. In other words, this measure provides an interim definition of citizenship. Once the sovereign entity has been created can that sovereign entity establish another definition of citizenship?

Mr. ANDERSON. That's my understanding. Like other Federal recognition legislation, this interim definition will be supplanted by a new definition that would be developed and placed in the constitution or other organic governing document that the interim governing council would establish. If that document were approved, the interim Federal definition pursuant to the legislation would basically disappear and the native governing body's own definition would be the operative one in the future.

Senator INOUYE. In other words, for the purposes of this interim process we will use the definition established in the 1920 law, is that correct?

Mr. ANDERSON. I want the Justice Department to check me on this, my understanding is that it is the definition used in the 1920 law, but modified in some respects to include lineal descendants of those mentioned in the 1920 law.

Ms. AGTUCA. That's correct.

Mr. ANDERSON. Thank you.

Senator INOUYE. And at a later time, if it is the desire of the new sovereign entity, they can change that?

Mr. ANDERSON. That's correct.

Senator INOUYE. Are there any disadvantages associated with this relationship?

Mr. ANDERSON. Well, I think any time that you are a member of a governing body in terms of being on a governing council, I know that there are complaints, as you well know, in terms of being a representative of your people in a political institution. But that's hardly a downside in most peoples' view. I think that it is generally viewed as an extremely positive situation to be in, because you do have a seat at the table. You don't get everything that you want just because you're a native government but in the nature of our tripartite sovereignty nobody gets everything that they want. But it is beneficial.

Senator INOUYE. If I may ask another question, what impact does a government-to-government relationship have on the ability of Native people to participate in, and be recognized by, an international forum?

Mr. ANDERSON. Well I think, if anything, it enhances the ability of native governing bodies to participate in international forums.

Because they would seemingly be a step ahead of any other NGO in the sense that they would be able to demonstrate that they are in fact recognized as a sovereign by the United States.

Senator INOUYE. Section 7 of these bills, both of them, provides a process for the development of a roll of those Hawaiians who wish to participate in the formation of the interim governing council, and the development of organic government documents, and in each step of that process there is a role for the Secretary of the Interior to play. Is that correct?

Mr. ANDERSON. For the most part I believe that is correct.

Senator INOUYE. Now some have suggested, I will repeat this because this is very important, section 7 of this measure provides a process for the development of a roll, a list of citizens, of those native Hawaiians who wish to participate in forming the interim governing council. At each step of the process of the Secretary of the Interior plays a role. Now, some have suggested that the Secretary should not be involved in each step of the process. Drawing upon your experience with other native groups in the process or organizing or reorganizing, can you tell the committee why there is typically a role for the Secretary and why that role is important?

Mr. ANDERSON. Yes; I believe I can. Since the Interior Department was established in 1849, Congress has explicitly designated the Secretary as the Cabinet officer who is responsible for the administration of native American affairs. In that sense the Secretary of the Interior is the individual to whom other parts of the Federal Government look for affirmation that a particular group is in fact acknowledged and recognized as a native American governing body. For that reason, it is important for the Secretary to enunciate some basis on which he can make that certification—that yes, this group is a federally recognized tribe and that the State Department, or Department of Labor, or whomever ought to deal with them as such. Now, in terms of the nature of the Secretary's involvement in the promulgation of a roll, or in the development of a constitution, I think there has appropriately been an expression of concern about what the Secretary of the Interior, or the Bureau of Indian Affairs, might do in that capacity. Our view is that the way to deal with those concerns is to make sure that the legislation is drafted in such a way that any discretion the Secretary might have is appropriately limited. So that it would not be a matter of the Department of the Interior meddling in things that are really the business of Native Hawaiians, in terms of developing a roll, but that our legitimate functions that will support and provide the basis for the ultimate recognition of the Native American governing body. So that he might, for example, say "Yes, I'm satisfied that it was native Hawaiians who voted for this interim governing body." And, he needs to have a basis to do that.

Senator INOUYE. These are fundamental questions I am asking Mr. Anderson. Could native Hawaiians form a government and adopt governing documents without the Secretary's involvement and then petition the United States for formal recognition of a native Hawaiian government? And, second, if native Hawaiians proceeded in this fashion, what impact would it likely have on the ability to secure a government-to-government relationship with the United States?

Mr. ANDERSON. Well I think that it would be a possibility as a theoretical matter and as a legal matter. I think it would be unlikely to be successful as a practical matter. The way that this legislation is drafted provides a mechanism by which Native Hawaiians would be a step ahead of the game right out of the box by having explicit acknowledgement of the appropriateness of a government-to-government relationship, and would work in partnership to develop the governing body among themselves and have it certified. I think the other route would not be likely to succeed as a practical matter in any reasonable amount of time, and by reasonable I say 10, or 20, or even 30 years.

Senator INOUYE. Some have asked; "Why should Hawaiians want to support the establishment of a government-to-government relationship with the U.S?" In your view, why should the government-to-government relationship with the United States be important to Native Hawaiians?

Mr. ANDERSON. I think it's important to serve as a foundation and a expression of Congress' intent that the statutes that have already been passed for the benefit of native Hawaiians were passed pursuant to the Congressional power over Indian affairs and that those statutes are in fact Constitutional. I think that is a very fundamental benefit that comes out of this legislation. Reading the Supreme Court opinion, again, it is important that we have a strong Congressional statement when the next case goes up involving the constitutionality of those statutes.

Second, it provides native Hawaiians with the recognition that they have governmental status under the Constitution and can accordingly have a seat at the table to negotiate with the State, with other parties, and with the Federal Government, for the appropriate relationship and structure among those different governing bodies. That's what, as you know, tribes in the lower 48 States and Alaska do on a continuing basis. That's how we've ended up with the self-determination statutes and the self-governing statutes where those native American tribes have taken over the administration of most Federal programs.

Senator INOUYE. Thank you very much Mr. Anderson. I will call upon the cochair of this hearing and I'll await my second turn to ask questions of Ms. Agtuca.

Mr. ABERCROMBIE. Thank you very much Senator. Mr. Anderson, thank you very much for coming today. Senator Akaka and myself have some questions that I'll submit to you for further consideration. I think it would be most useful so we can move along. I just want to ask you a couple of things which you can give a brief answer to on the basis that we reserve the capacity to put a more extensive and perhaps reconsidered answer in writing.

Section 7, as Senator Inouye has indicated, provides a process for native Hawaiians' reorganization as a government entity and the bill has been drafted with the specific role to be played by the Secretary of the Interior. I think you have answered this in some respect already, but I want to make certain, for the record particularly, as we begin these hearings and summaries as this will go out into the general public, so I hope you'll indulge me just a moment. So the Secretary of the Interior will certify that certain procedures in the process comply with Federal laws, is that correct?

Mr. ANDERSON. That's correct.

Mr. ABERCROMBIE. And, I take it that the Department's position with respect to this role that they intend to play, and feel they should play, is that we are going to make certain that we keep Constitutional processes intact in case it should be reviewed in some legal proceeding subsequent to the passage of this bill.

Mr. ANDERSON. That's correct.

Mr. ABERCROMBIE. That gives you a legal basis as an attorney then to be able to represent that to the courts, correct?

Mr. ANDERSON. That's true, and I think even equally as important as the process is going on, if somebody should run to a judge and try to get the process halted. If the Secretary is able to present to the court information that this is going along exactly as Congress envisioned, then that's beneficial and will help expedite the process, it seems to me.

Mr. ABERCROMBIE. So it is important that Congressional intent include very clearly the idea that the Department will be, in effect, monitoring, if you will, this process.

Mr. ANDERSON. Monitoring with limitations on the Secretary's discretion is something that we think is entirely appropriate.

Mr. ABERCROMBIE. Thank you. So, therefore, can the governing entity be recognized by native Hawaiians without the involvement of the Secretary of the Interior effectively?

Mr. ANDERSON. Not to effect Federal recognition.

Mr. ABERCROMBIE. Excuse me, did I say recognize? I meant reorganize. Let me state it again. Can the governing entity be reorganized by native Hawaiians without the involvement of the Secretary of the Interior, effectively?

Mr. ANDERSON. I think the key word is effectively. I doubt that it could be done in a way that would be as expeditious as pursuant to this legislation.

Mr. ABERCROMBIE. Otherwise great chances would be being taken, correct?

Mr. ANDERSON. That's correct.

Mr. ABERCROMBIE. Okay, thank you. Again, the legislation currently provides in its present form, Federal recognition of native Hawaiian governing entity for the establishment of a government-to-government relationship once the native Hawaiian governing entity has been formed. The legislation again is drafted this way because Congress has evidenced by the number of statutes that you've already cited, or Ms. Agtuca has cited, have been passed to address the conditions of native Hawaiians. That legislation already recognizes Native Hawaiians as aboriginal and indigenous native people of the United States. Does the Department have a position with respect to whether the legislation should be amended to provide for Federal recognition of native Hawaiians rather than a native Hawaiian governing body?

Mr. ANDERSON. Well, I think the Supreme Court has made it pretty clear that the relationship between the Federal Government and native American groups is based on a government-to-government relationship and membership in those governing bodies. So I think it would be a great peril to not provide for recognition of the governing body.

Mr. ABERCROMBIE. This provides, in your judgment, a sound legal foundation as we move forward with this as opposed to merely recognition of a relationship to what might otherwise be considered either amorphous, or in fact unconstitutional, that is, native Hawaiians as such?

Mr. ANDERSON. I think it is very important and critical that legislation like this be passed.

Mr. ABERCROMBIE. Thank you. I appreciate, by the way, your going over this. As I say, this may be familiar to some of us that have spent hours, weeks, months, and even years on it. But for the general public, I take it you agree, it is very important that we try to make it as explicit as we can and in as succinct a manner as we can, what some of the consequences and implications are.

Mr. ANDERSON. Thank you.

Mr. ABERCROMBIE. I appreciate your answers in that respect. Again, in the context of the government-to-government discussion that we have engaged in, as the agency responsible for aboriginal, native and indigenous peoples of the United States, you have extensive experience in this area. Can you provide perhaps one or two examples of how a government-to-government relationship would affect native Hawaiians through this governing body?

Mr. ANDERSON. I think that, as I indicated earlier, Federal recognition provides, as this bill does, the opportunity for native Hawaiians to have a much greater voice in the shaping of Federal programs that affect their day-to-day lives, of which there are many. Consultation on budgets, the President in this Administration has repeatedly invoked the executive authority to mandate that Federal agencies recognize the governmental status of native groups that are recognized, and ordered that the Federal agencies respect that relationship and deal with them as governments, and not just as any other group.

Mr. ABERCROMBIE. In other words, if we are dealing then with requests made to Federal agencies where there are implications with respect to the particular relevance of existing Federal programs and whether someone be eligible for them, this legislation and the way it is being presented right now forms a legal foundation to be able to participate and to possibly overcome any legal challenges to the right to participate in these programs?

Mr. ANDERSON. It provides a strong legal benefit and a strong practical benefit in terms of being a government. I don't know how many times I have sat with the Secretary or other leading officials at the Department on a matter that might effect a native American group, the question is always asked, "Well what will the tribe, what will the native American governing body that this might affect think about it?" and that's because they have this Constitutional status as a government.

Mr. ABERCROMBIE. Absent that we might find ourselves engaged in another long series of academic discussions about what might be, or should be, or could be, and not even necessarily what would be but rather we would then have a firm foundation upon which to stand should there be any legal challenge?

Mr. ANDERSON. Yes; I suggest that this is not the time to test the limits of Constitutional law affecting native Hawaiians in the Supreme Court.

Mr. ABERCROMBIE. Thank you very much.

[Much interruption in background]

Mr. ABERCROMBIE. I'm sorry, we will move as quickly as we can. We have to establish a very firm solid foundation, a record that can be read by those who are not participating in the hearings today. We will get to everybody. Everyone will have his or her say. We are trying to establish a foundation so if you could take your seats so that others who have signed up and want to participate will be able to do so in good order we'd be very appreciative. We cannot consult if you don't sit down and give the opportunity to those who have signed up in order to be able to be consulted as well. We are making a plea with you to give us an opportunity to deal with your questions in good order. Thank you very much.

WOMAN'S VOICE. This is what I think of your bill. This bill tells me that I am going to be an Indian.

Senator INOUYE. No; it does not.

Mr. ABERCROMBIE. It does not happen that way.

[applause]

Mr. ABERCROMBIE. I can assure you that our Indian friends give other people the opportunity to speak.

WOMAN'S VOICE. Is this bill not for Indians? No matter how I edit it will I not be?

Mr. ABERCROMBIE. No; we're going to try and give everybody their opportunity.

Senator INOUYE. Ma'am may we proceed with the hearing.

WOMAN'S VOICE. We will proceed, sir, America needs to accept the responsibilities for their wrongs. And then you can make America accountable for their wrongs, I will listen to you to tell me when America has illegally overthrown us.

Mr. ABERCROMBIE. There are people who want to be heard.

Senator INOUYE. We will stand in recess.

Mr. ABERCROMBIE. Thank you very much.

[Recess.]

Senator INOUYE. I thank you very much. And now, if we may proceed, may I now recognize Representative Mink.

Mrs. MINK. Thank you Senator Inouye. As my colleague Mr. Abercrombie has noted, I have a number of questions that I want to propound to both of the departments that are here, and most of them I will submit in writing in the interest of time. But the issue of membership is one that has raised a number of questions in the community and I think that the membership issue needs some clarification in this public hearing. With respect to the recommendation that we follow the Hawaiian homes department eligibility criteria, adding to that the children coming since that time, that means that automatically everyone that's in a homestead situation would be automatically a member, plus all those who have applied and been qualified, plus others that may come forward. That's an automatic concept of the roll of the members of this entity. And they would be governed by what is already well-determined documents or court decisions relative to tribal law. It goes to your definition of sovereignty that there are these three sovereigns, the Indian nations, the State, and the United States, and all of this sovereign authority, except for a few situations, will pertain to the new entity that is being created. So my question is, all of the na-

tive Hawaiians that choose to participate and are eligible under the definition that you are suggesting, and put their names on the rolls, and vote in accordance with what the bill provides in setting up the interim council, and deciding who their officers are going to be, and constructing the constitution, and all the rest, will the non-residents of the Hawaiian Homes Commission lands who live outside in the community in private residences who meet the qualifications of a native Hawaiian be governed by the tribal law doctrine that has been collected as a result of many, many years of litigation? Because you went through a list indicating child custody issues, and property issues, and all those things having to do with civil law, will be governed by the new entity's creation of law, and that is supreme over any State laws, or, in fact, even the Constitution of the United States. So, could I get clarification about those not living on home lands? As most of the decisions I've read in the Indian cases, such as the *Martinez-Santa Clara* case, they talk about reservation Indians, as against non-reservation. So I wanted to know what is the Department's best thinking about the consequences of voting, becoming a member, participating in the governing process, with reference to then being covered by sovereign tribal law which contravenes State law with reference to sexual equality, custody, child custody, all the domestic relations cases, and particularly the one that we all cite, the *Martinez* case. Thank you.

Mr. ANDERSON. I think the shortest answer is that, if those members who reside off the homelands choose to voluntarily affiliate with the tribal government, or with the reorganized government, that yes, they would be subject to its authorities. They would be entitled to vote for the officers and governing councils who would set the laws. Now, the powers of native American governments outside of their land base, reservations in the lower 48 States, are quite limited in comparison to say the Navajo Nations' power to exercise rules and regulations over members who reside on tribally owned lands. I think the most recent example we have of this is up in Alaska. It's an analogous situation where the Federal Government argued, and the Alaska State Supreme Court agreed, that native American tribes in Alaska that did not have reservations have concurrent authority over domestic relations matters. That tribal members who choose to use their tribal court for adoptions could use those forums and the State Supreme Court agreed with us that State courts should recognize those tribal court decrees if they were satisfied that due process was satisfied. When you're outside of a reservation or tribal land context the powers are more limited, but the power to set membership in other solely internal authorities would be established by the Government and would be binding on those who voluntarily affiliate with them. Although I note that the bill has ample provisions for ensuring that civil rights of members of the governing body are protected and makes the provisions of the Indian Civil Rights Act directly applicable and seems to infer that it must be part of the actual tribal constitution.

Ms. AGTUCA. If I may, Representative Mink, I think in reference to the eligibility, the bill does not require that a native Hawaiian reside on trust lands or in the State of Hawaii, but must be eligible to hold those lands. And it is important to note that this is, again,

an interim definition that can be changed once the governing body selects an interim governing council.

Mrs. MINK. I'm not questioning that definition of eligibility. I'm trying to ascertain what the consequences are of becoming eligible for membership, deciding to participate and signing on the rolls, but not living on Hawaiian homestead lands at all or not wanting to, not having filed to get any ownership rights with respect to Hawaiian homes lands and you are resident outside the community but you have fully participated. You have signed the rolls, you vote, you help to elect, you ratify the constitution. Are you then subject to the laws that are drafted by that governing body with respect to civil actions, with respect to domestic law, childcare, adoptions, all the things that I have read about that the sovereign nation of an Indian tribe is superior to the State law in whose State boundaries they happen to exist? And that was a concern that some people have raised with me. They would like to participate, they would like to be on the rolls regardless of whether they would be eligible in the first instance or the later instance. The big question is, do they then become subject to those laws which they helped to create by participating? And if they, in some way, are different than the laws that govern the non-Hawaiians in the community how would that be adjusted? Which law would prevail? By virtue of being a member on the rolls, would that subject you to the tribal law as distinguished from State law? That was my question.

Mr. ANDERSON. If I could just reiterate, I think there are very limited circumstances in which the native governing body's laws would supercede State law absent some agreement that particular land should be treated like a reservation which we are a long way from talking about here. We're talking about membership in the governing body. So I think people who are concerned about that should be aware that these notions of tribal sovereignty over members and territory that the tribe actually controls, and we're not talking about territory here, in large part, and the question that you've raised.

Senator INOUYE. Would you yield for clarification?

Mrs. MINK. Oh yes, I'll yield.

Senator INOUYE. At this stage, the stage that is set forth in this bill in which you have recommended the definition of citizenship, if I who qualify to live on homestead land should decide to participate, I can do so with the knowledge that, at this moment, while participating, a sovereign entity has yet to be formed. Isn't that correct?

Mr. ANDERSON. That's true.

Senator INOUYE. A constitution has to be adopted, isn't that correct?

Mr. ANDERSON. That's absolutely right.

Senator INOUYE. And the officers have to be elected before any obligation or responsibility of citizenship would become a part of my life, is that correct?

Mr. ANDERSON. That's true.

Senator INOUYE. Therefore, the question of Representative Mink would become relevant after the sovereign entity has been formed. Is that correct?

Mr. ANDERSON. That's true.

Senator INOUYE. At that stage it would be within the power as set forth in the constitution developed by Native Hawaiians to set up these rules and regulations. Is that correct?

Mr. ANDERSON. That's how the bill operates, yes.

Senator INOUYE. Now at that stage would those provisions in the constitution be subjected to scrutiny by the Secretary.

Mr. ANDERSON. The bill provides, like other existing laws, that the Secretary can only approve the constitution if he finds that it is consistent with Federal law. And that would include the Indian Civil Rights Act and other Federal statutes that apply across the board to Native American tribes. So the Secretary would have to approve it and look to make sure that rights were protected.

Senator INOUYE. Thank you.

Mrs. MINK. Thank you, and I would like to ask for consent that I be allowed to submit further questions to the witnesses.

Senator INOUYE. Without objection.

Ms. MINK. Thank you.

Senator INOUYE. Now, it is my pleasure to call upon the Delegate from American Samoa, Chief Faleomavaega.

Mr. FALEOMAVAEGA. Thank you very much Mr. Chairman. I am sure that every member of the hearing can feel the sense of utter frustration and the problems affecting the native Hawaiian community as has been demonstrated by some of our visitors here this morning. Certainly, we sincerely hope that we continue the process and allow every member of our Hawaiian community to be heard. Whatever might be the position that they take. Mr. Anderson, I was reading your statement and listening to some of the things that you mentioned and in my limited knowledge of Constitutional law there seem to be two basic provisions of the Federal Constitution that directly address this issue of dealing with Native Hawaiians. Under article 1, section 8, where the Congress is specifically and expressly given the power to deal directly with Indian tribes. Am I to understand that this is one of the fundamental tenets of the proposed bill? To elevate or to give full consideration to native Hawaiians to be treated on equal par or status with those of native American tribes? Is this one of the efforts of this proposed legislation, to achieve that goal not only by way of national policy, but to be in conformance with that provision of the Federal Constitution.

Mr. ANDERSON. That's correct. The bill would express Congress' intent to use that Constitutional authority to deal with native Hawaiians in that fashion, as sovereigns.

Mr. FALEOMAVAEGA. Has a similar effort also been made for Alaska Natives, because they are not mentioned in the Constitution?

Mr. ANDERSON. That's exactly right and I practiced law in Alaska for a long time and heard very similar debates to what we are hearing today. That Alaska Natives are not Indians. But the fact is that the power under the Constitution has been interpreted to apply to indigenous peoples within the United States, which would include native Hawaiians and Alaska Natives.

Mr. FALEOMAVAEGA. Are you an Alaska Native yourself Mr. Anderson?

Mr. ANDERSON. No; I'm a member of the Minnesota Chippewa Tribe.

Mr. FALEOMAVAEGA. Oh, okay. Mr. Anderson. Part of this frustration from our native Hawaiian community, looking also at the history on how the Federal Government has treated native American Indians, has been a record of tremendous shame and the reluctance to see that, by example, from our own nation as a matter of history the first policy of the U.S. Government was to kill the Indians. In fact, a famous general even made this platitude by saying; "The only good Indian was a dead Indian." Then the next policy was to assimilate the Indians. Make them all blue-eyed Americans, be part of the American dream, make them lose their identity as native Americans. Then the next policy was to terminate the recognition of these Indian tribes. That policy instilled a lot of pain and suffering, as I know and you know. So now the policies recognize some 550 known Indian tribes that make up the native American community throughout the country. I want to ask your assessment, if this proposed legislation hopes to alleviate so many of these historical, shameful, acts that have been taken upon your people, the native American community throughout our Nation? And I just wanted to request your sense of what the Hawaii delegation, is sincerely trying to resolve for the native Hawaiian community. That they do not get caught into some of these things that I have just described to you.

Mr. ANDERSON. I think that, as a matter of policy, what the delegation has proposed here is extremely positive. None of us sitting up here defend in any way, shape, or form, the termination policy, the genocide policies that were in vogue in the 19th century for a time, or the assimilation policy, but we support the policy of self-determination within the Federal framework. That's what this legislation does and we think it's a step in the right direction. And, that it is much preferable to doing nothing which could result in harmful court decisions dealing with existing laws that benefit native Hawaiians.

Mr. FALEOMAVAEGA. The *Rice* v. *Cayetano* case was very informative given the fact that by the stroke of a pen all that the people of Hawaii through a State constitution and every effort to recognize the special needs of the native Hawaiian community by establishing OHA, by the stroke of the pen the Supreme Court says that there are some problems that we have here. Do you anticipate that we are going to have some more *"Rices"* here in this situation dealing with the native Hawaiian community if we should implement this procedure and the proposed legislation?

Mr. ANDERSON. I guess I can't predict the future, but I would guess that there are always individuals who choose to challenge the ability of the Federal Government to deal with native Americans on a government-to-government basis, and that may happen. The advice that we're trying to provide in comments, especially the Justice Department, are to try to assist in making sure that the bills, if they pass, become as defensible as possible, as a matter of Constitutional law.

Mr. FALEOMAVAEGA. We are aware of the fact that the Navajo Nation has probably the greatest number of the members of that nation with 250 thousand people. What is the approximate land

area of the Navajo Nation in the United States? Could you just wing it?

Mr. ANDERSON. The Navajo Nation is, when I look at it, is just about the top of one-fourth of Arizona, which has got to be in the neighborhood of at least 1 million acres.

Mr. FALEOMAVAEGA. They have their own constitution?

Mr. ANDERSON. No; they don't have a constitution. They operate pursuant to basically Navajo common law.

Mr. FALEOMAVAEGA. And this has worked very well for the Navajo Nation and the State of Arizona.

Mr. ANDERSON. They have had their ups and downs, but they negotiate and work things out on a government-to-government basis.

Mr. FALEOMAVAEGA. As well as with the Federal Government?

Mr. ANDERSON. As well as with the Federal Government.

Mr. FALEOMAVAEGA. Let's say for starters the Island of Kahoolawe is conveyed to the native Hawaiians for settlement, and for use, and for development. Is that a possibility?

Mr. ANDERSON. I think that any land transfers issues are possible depending upon agreement among the parties who have interests in those sorts of transactions, which I assume would be the Congressional delegation, the State, and native Hawaiians.

Mr. FALEOMAVAEGA. Mr. Chairman I know I've gone over my 5-minute time so I'll wait for the second round, thank you. Thank you Mr. Anderson.

Senator INOUYE. Thank you very much. If I may go back to the matter of the definition of native Hawaiian. Ms. Agtuca, why is your definition preferable to the one contained in the bill that would require documentation of lineal descendancy to the native people who resided in Hawaii on or before January 1, 1893?

Ms. AGTUCA. I think, first, Senator what the definition provided under the HHCA is that it would be those eligible or that hold land who are at least one-fiftieth part blood of the races that inhabited the islands at the time of contact, 1778. Now that definition specifically is part of a Federal act enacted by Congress utilizing its Indian affairs power. Those three things together assure that the statute that is enacted as part of these bills recognize a Federal law process. And I think that it is very important that we understand that would be an interim definition. But, one, it recognizes that there is a Federal law process that Congress has already used in recognizing the right of Native Hawaiian people to their specific homelands and to a traditional way of life. That was the purpose of the enactment of the Hawaiian Homes Commission Act. That recognition and prior Federal law process is a statement from that point in history until today that Native Hawaiian people have that right to self-governance. I think if the Hawaiian governing body, in its selection of an interim Hawaiian governing council, chooses to change that definition that's fine. But what we are saying, and what the Department of Justice is saying, is that for this interim period we need a definition that was defined by Congress within the Federal law process. In addition to that, what it also does is recognize that there is a specific population that Congress recognizes that has the right to continue its land-base link to the original inhabitors of the Hawaiian Islands. And that land-base link is a very, very important factor in recognizing the right of Na-

tive Hawaiians to self-governance. It was a statement by Congress in 1921 and that statement continues today. There is no other population that is recognized as having the right to hold land and maintaining the land-base link to a traditional way of life.

Senator INOUYE. What you are saying is that this definition was adopted by Congress, one. Two, it has withstood all Constitutional tests as of this moment, and that third, this definition will only be an interim definition,

Ms. AGTUCA. That's correct.

Senator INOUYE. Miss Agtuca, is there any provision in this measure that would make a Native Hawaiian an Indian or an organization of Native Hawaiians an Indian tribe?

Ms. AGTUCA. The answer to that question is very important because I understand the difficulty here. The point that I would like to make is that at the point of contact of Europeans with American Indians they viewed American Indians as any distinct community that had its own specific traditions, cultures, and economy. And that specific definition was termed "American Indians" or "Indian tribe."

However, the reference is really to native indigenous populations. So, just as the American Indian tribes that are federally recognized occupying the lower 48 are distinct from the Alaska Native villages that are federally recognized, however both are indigenous people; native Hawaiian people have a very distinct history, culture, language and that distinction places them in the category as an indigenous people of the United States. That does not per se make them an American Indian tribe. The context is very important, because indigenous peoples of the United States have specific rights and responsibilities. In addition to that, the Federal Government has a specific trust relationship so I think the answer to the question is native Hawaiians are an indigenous population of the State of Hawaii, just as the Alaska Native villages are an indigenous population of the State of Alaska, and as the American Indian tribes are an indigenous population of the lower 48. Alaska Natives also do not prefer to be called American Indians. They are Alaska Native villages. But in the context of the period in which Europeans came to the United States, they saw all the populations as Indians because they thought they were in India. So in answer, it creates their special status as a potentially federally recognized tribe. It does not make them specifically American Indians.

MALE VOICE [Off microphone.] May I ask a question, a family question?

Senator INOUYE. I will ask it for you, what is the question?

Mr. KALEIKINI [Off microphone.] My name is Arthur Keawe Kaleikini. We as Kanaka Maoli Hawaii under the constitution which my grandfather and that constitution exists today. How dare you make us to the tribes of Indian tribes. When the Europeans came here they looked at us because of our people being naked up here and not below the loins. Again, you have not researched the definition of the Kanaka Maoli Hawaii. Senator, I would like for you to input into your records that we are the indigenous people of Hawaii. We should be known as Kanaka Maoli Hawaii, not Hawaiian. There are many people who are born and raised here who call themselves Hawaiian.

Senator INOUYE. That is what she said. That you are not Indians.

Mr. KALEIKINI [Off microphone.] I prefer on the record of the U.S. Congress to put in writing the definition of Kanaka Maoli into the record and if you cannot pronounce it, I say to you, learn it. Thank you Senator.

Mr. ABERCROMBIE. So it is clear to everyone that we can proceed on a basis toward resolution. These definitions will be taken up by the native Hawaiian governing body to be determined subsequent to the interim definition that is being used so we have a legal foundation to be able to proceed. My friends, if we can't do this you will be left in chaos and the reason for the bill is to deal with the Federal side. If you don't recognize the Federal side than you have no business here. All we have available to us and as cochair of the hearings, what I'm trying to establish is that we have a process. If you do not recognize it then I don't think it is fair to others who understand that the only thing we have available to us elected under the Federal system is to try to proceed in an orderly way to establish for indigenous, aboriginal people their rights and their capacities to exercise judgment on their behalf.

We are trying to aid and assist that process and so the question that was raised about definitions will be taken up in good time. It will not be unrecognized, it will not be left out of the process. We are merely trying to establish, through this bill, a foundation to be able to come to those conclusions that have just been enunciated.

Senator INOUYE. If I may, as chairman of this meeting. This is the first step, the interim step. If we are successful in passing this measure and then the Kanaka Maoli form a governing entity at that stage when you adopt your governing documents, or constitution if you wish to call yourself Kanaka Maoli that is your right. We do not want to tell you what you should decide. At the stage when you form a sovereign entity you can decide on your title.

May I continue with my questioning?

Ms. Agtuca, there is a section in the measure that speaks of a charter of incorporation. Upon petition of the native Hawaiian governing body, the Secretary may issue a charter of incorporation to the native Hawaiian governing body. Upon the issuance of such charter of incorporation the native Hawaiian governing body shall have the same status under Federal law when acting in its corporate capacity as the status of Indian Tribes. That may have caused the confusion here.

Ms. AGTUCA. Senator, I believe that this section is a recognition of the rights of the native Hawaiian governing body. So the issue here that is fundamental and critical is that the interim native Hawaiian governing body and council will determine its course into the future. So this point provides an open door in terms of the rights of the native Hawaiian governing body.

Senator INOUYE. No; is it not correct that this section, the incorporation authority, would provide the governing body certain tax exemptions when the governing body is acting in its corporate capacity? Is that correct?

Ms. AGTUCA. That's correct.

Senator INOUYE. And that being the case, can that be done without using the word "Indian" when the governing body is acting in its corporate capacity in the same way that other native Americans

that have been issued a charter of incorporation under the authority of section 17 of the Indian Reorganization Act.

Ms. AGTUCA. Yes Senator; this could be amended.

Senator INOUYE. Then we can take out the word "Indian" so no one would be confused.

Ms. AGTUCA. Yes.

Senator INOUYE. Thank you very much.

Now may I call upon our cochairman.

Mr. ABERCROMBIE. I'll submit questions.

Mr. FALEOMAVAEGA. I'm going to submit questions too.

Senator INOUYE. Its been a long morning, but we thank you Mr. Anderson and Ms. Agtuca.

Ms. AGTUCA. Thank you Senators.

Mr. ANDERSON. Thank you.

Senator INOUYE. And now may I call upon the first panel of witnesses. Robin Danner of Anahola, HIi; Tom Contrades of Kapaa, HI; Sondra Grace of Anahola, HI; Michael Grace of Anahola, HI; and Mr. Kekane Pa of Lihue.

We have noted that Ms. Danner and Mr. Pa have indicated their presence here. May I first recognize Robin Danner.

STATEMENT OF ROBIN J. PUANANI DANNER

Ms. ROBIN DANNER. Aloha, thank you for this opportunity to present testimony on legislation introduced to establish a new level of United States policy toward the aboriginal people of Hawaii. I am Native Hawaiian born on Kauai and currently living on Hawaiian Homelands for the last 2 years. I have spent 35 years on the ancestral lands of the proud Inupiat Eskimos of Alaska, and the reservations of the Navajo, Hopi, and Apache people. I know well the meaning of Federal recognition to an aboriginal people, both the advantages and disadvantages. I have lived it on a daily basis, worked within the parameters, which include some limitations, and likewise reap tremendous opportunities.

Perfect sovereignty does not exist on Earth, only in the heavens, but perfect sovereignty is the goal, the benchmark of people everywhere, to seek the highest and best form of governance for the betterment of all. Hawaiians are no different. We will undoubtedly continue to seek, and should seek to perfect our sovereignty, to achieve and exercise its highest form. With this in mind I view the exercise of sovereignty and the goal of perfecting it for the Hawaiian people as a journey; as an achievement to be embraced in degrees. Your legislation directs the United States internally, to recognize a greater degree of our sovereignty, and in doing so, we will have traveled a little bit farther in our journey. I can support the legislation because it is not a treaty, it is not a contract with the Hawaiian people that requires us to give up any claims, any rights to lands, or to give up any work toward total and complete autonomous sovereignty. I can support it because it is not a mandate on me, or any other Hawaiian. It is a mandate on yourselves, on every Federal official, on every Federal agency, every corner and crevice of the Government of the United States. Your legislation tells all of these entities and every State and county government in America that Hawaiians are not to be viewed as minority citizens who immigrated to this land. Your legislation recognizes another

sphere, that Hawaiians have the right beyond citizenship in America, we have the right of citizenship to our own government by our choice.

This mandate, this legislation you have introduced, will provide protection of assets that belong to us. A simple sentence really, but the impact looming is so large and so great. Without this mandate for yourselves, for the U.S. Government to guide itself, Hawaiians stand to lose not millions, but billions of dollars and the land that we have held on to for more than 70 years. The impact of such a loss is almost inconceivable.

This mandate for the U.S. Government will slow the assault on our people, represented in statistics of homelessness, life threatening health conditions, incarceration and so much more. No, it does not solve these challenges, but it moves us in our journey and our fight for the right to solve these issues ourselves, the exercise of sovereignty.

Much has been said over the many months, and even in this hearing today, about whether this bill attempts to turn me, a Hawaiian, into an Indian or an Eskimo. Neither this bill, nor any bill can accomplish this. The Indian people, the Alaska Natives, are as proud of their heritage as I am and will defend their rights to self-determination until their last breath is taken. They have settled for nothing, they continue to march onward and to embrace every degree of sovereignty possible. My words need not convince anyone, over 500 years of fact, of history, the blood of their warriors, the blood of their women and children, the tears of their grandmothers are proof of their noble and successful stands. They will continue to rise up, to live through, and to fight for every degree of self-determination. And they have used every victory won to prepare for the next battle, to regain setbacks along their journey. Your legislation represents a victory for the day-to-day issues that face our people. And if passed by the Congress, we will stand upon it to fight the next day.

This bill does not represent the end all, be all of Hawaiian self-determination. Just as domestic sovereign recognition of the Indian nations has not been the end for their people. This bill represents a bright beginning from which we will build upon to begin the most important step for any self-governing group of people, control of our own destiny.

Senators and Representatives, I would like to close by saying I know this legislation is not the end, it is the beginning. You know that more will need to follow; that there are many more degrees of sovereignty to be won on the battlefield of the U.S. Congress. Specifically, to begin the dialog of land transfers to the Hawaiian nation. I appreciate each of you for taking up the cause. Not for giving me sovereignty, it is not yours to give. But for pursuing a United States law that requires my existent sovereignty, my status as a citizen of my own native government to be recognized by every government in America.

And finally, I would like to thank you for respecting the work of Hawaiians who continue to fight on other battlefields, in the international arena. You have respected their ongoing work and have drafted a mandate, a bill, for the U.S. Government to follow that does not impede those efforts.

Mahalo.

[applause]

[Prepared statement of Robin Danner appears in appendix.]

Senator INOUYE. I thank you, Ms. Danner, for your extremely profound statement. I hope that the Hawaiian community will take your statement very seriously. I appreciate it very much.

Now I will call upon Mr. Pa.

STATEMENT OF KEKANE PA

Mr. PA. Thank you Mr. Inouye, aloha people from the Island of Kauai [native language] district two for the lawful Hawaiian government that came out of exile March 13, 1999, mahalo.

Attention joint hearings of Indian Affairs and House Committee on Resources. Greetings, my name is KeKane Pa. I'm a descendant of Keheowa' anuiiponiliihoapa'ipainohohupa [the great canoe that flows and is anointed by the rising, thrusting and landings of the waters], which our lineage traces back to King Kalani opu'u. He was like a judge that went from one district to the other districts and later took the last syllable name, Pa. Kanaka maoli on his national land, the only humans that populated these islands prior to 1778.

I'm speaking on behalf of my family from time immemorial to present time. The Kanaka maoli are the first comers. They are the aboriginal class of people of this national land. Birth name and birthrights to their nation, not to America. This is foreign soil, not American Soil. The petition of 1897 clearly states that America cannot use the word Native Hawaiian in any form or shape. So all of these Hawaiians that support this bill need to be informed that they are giving up their birthrights to their national land and giving up their rights to speak or represent their nation and country. They will be recognized as native Americans and not Native Hawaiians; as a second class citizen under the Federal status.

Mr. Inouye, Mr. Akaka must inform these people respectively, the Native Hawaiian Task Force admits that the Federal Government never had relationship with native Hawaiians, so how could the State of Hawaii have an office such as OHA to represent the aboriginal class of people not indigenous? This is a political attack against the Kanaka Maoli culture and religion, and genocide. Deliberate, methodical annihilation of a national or racial group under the 1987 Proxmire Act, 18 USC 1091, 102 Stat. 3045. This is a move to protect the Federal Government's interests and conspirators that participated in destroying one's nation without a treaty from the Hawaiian Kingdom. This is an unlawful state that uses America's jurisdiction to ignore the Hawaiian Kingdom laws and commercialize their national lands. The reinstated lawful government of the Hawaiian Kingdom/Kingdom of Hawaii return from exile March 13, 1999 using the highest laws on the planet. Na Kanaka Maoli representing all the districts described in the Hawaiian Kingdom laws reinstated the de jure [lawful] Hawaiian government using universal laws, the laws of nation, natural laws and international law. It also uses the laws of the Hawaiian Kingdom. These individuals repatriated back to their nation. The United States of America is aware of this government. That's why they are acting on the Apology bill that was recognized in 1993. They had

7 years to work out a relationship. Now they want to do it within 4 months and ram it down our throats. Hawaiians must realize they are falling into another trap. Senator Inouye's trap who took part in creating the OHA who lost in the Supreme Court *Rice* v. *Cayetano,* because of discrimination. We never had and never will have self-determination under the Federal status. United States of America and the State of Hawaii is a de facto and illegal State and government and on the Kanaka Maoli national foreign soil known as the Nation of Hawaii.

The Federal Government is trying to have a status to protect all of the sugar plantation companies that stole the land and made everybody believe that this is America. That they have no right to sell our national lands without a treaty from the Hawaiian Kingdom, brothers and sisters. These are my arguments, Senator.

The U.S. Supreme Court had ruled that the "municipal laws of one nation do not extend, in their operation, beyond its own territory." See The Apollon, Edon. Claimant, 9 Wheat 362 (U.S. Supreme Court). United States Congressional acts have no effect in the Hawaiian Islands.

Without a treaty of annexation by the Hawaiian Kingdom, the following municipal laws enacted by the U.S. Congress have no legal affect in the Hawaiian Islands, which is outside of the territorial jurisdiction of the United States of America, namely: [A] A joint resolution purporting to annex the Hawaiian Islands, July 7, 1898; see Joint Resolution of Annexation, U.S. Statutes at Large 30, July 7, 1898, 750- 751. [B] An act purporting to provide a government for the Territory of Hawaii, April 30, 1900. See Hawaii Organic Act, U.S. Statutes at Large 31, April 30, 1900, 41–162. [C) An act to amend an act purporting to provide a government for the territory of Hawaii by establishing the Hawaiian Homes Commission Act, July 9, 1921. See Hawaiian Homes Commission Act, U.S. Statute at Large 67, July 9, 1921, 108–115. [D] an act purporting to admit the State of Hawaii into the Union, March 18, 1959 and See Hawaii Statehood Act, U.S. Statutes at Large 73, March 18, 1959, 4–13.

Existing treaties between the Hawaiian Kingdom and the United States are the Treaty of Friendship, Commerce and Navigation. See Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom, U.S. Statute at Large 18, December 20, 1849, 406. See Convention of Commercial Reciprocity with the Hawaiian Kingdom, U.S. Statutes at Large 19, January 30, 1875, 625 at 69, see Supplementary Convention to the Convention of Reciprocity with the Hawaiian Kingdom, U.S. Statutes at Large 25, December 6, 1884, 1399.

U.S. Constitutional law treaties entered into by the United States are the supreme law of its land. See U.S. Constitution, article VI–2, in part, to wit:

> 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.

The facts, the United States had no power, again, no power to extraterritorial over the Hawaiian Kingdom or the Hawaiian subjects. See *Mankishi* v. *Hawaii,* 190 U.S. 197 [1903]. The Supreme Court directly addressed the effect of the Joint Resolution. The

Court held that the Resolution did not incorporate Hawaii as an integral part of the United States. See, inter alia, *Peacock and Company* v. *Republic of Hawaii,* 12 Hawaii 26 [1899]. These are laws people, statutes. As well as the effect rendered by the Attorney General of the United States, see 22 AG Opinions at 151 "The Tonnage Tax." Senator Foraker did in fact concede that the Joint Resolution had no power to annex the people of Hawaii. See 31 Congress Record at page 6585, 55th Congress 2d Session. This conclusion follows logically from his admission that the laws of the United States did not apply to Hawaii, that Congress had no power extraterritorially ID. They do not have an ID for this power. Therefore, the de facto courts of the State of Hawaii's judgment on the Hawaiian subjects is in violation of our human rights. This is the evidence and proof that the United States of America and the State of Hawaii is in an act of genocide and violation of human rights on a Hawaiian subject by the Constitution of the Hawaiian Kingdom within the treaties between the United States people, they have a treaty on the subjects.

According to the Congressional laws, these treaties entered into by the United States are the supreme law of the land. Therefore, all of the United States laws enacted by Congress and imposed in the Hawaiian Islands are inferior to the 1849 Treaty, the 1875, the 1884 Convention and cannot be legally enforced without violating international law and comity. See U.S. Constitution, article VI–2, in part, to wit:

Notice to this Joint Hearing of Indian Affairs and House Committee on Resources who are government employees of the United States of American and the State of Hawaii. Your obligation as an officer is to uphold the law and to comply with compliance as an officer of the United States of America and to perform his or her duty under 28 USC Secretary 1361.

I'm serving you notice that you will be liable to be held as conspirators of genocide and human violations against a foreign national or their nation.

I want to thank you for giving me my chance to come out and share this manao. Yes, the Senator and the people up there have the petition with my ancestors' name on it that did not give my rights to be a Native Hawaiian. They have that copy. They also have a copy of the time immemorial of 1897 from my ancestors. Okay. They also have a copy of Sanford Dole 1895 honoring people for suppressing the rebellion against the Kanaka maoli. Thank you very much.

One last thing before I leave please. Our obligation with these people with the Federal Government is not to the Native Hawaiians is to Queen Lili'uokalani.

[Prepared statement of Mr. Pa appears in appendix.]

Senator INOUYE. I thank you very much Mr. Pa.

Mr. PA. Thank you Mr. Inouye.

Senator INOUYE. And now for the next panel. Jade Danner of Anahola; Duke Sabedong of Anahola; Keohokui Kauihama of Anahola; Kaiopua Fyfe of Lihue; and Kawika Cutcher of Anahola.

May I now recognize Jade Danner.

STATEMENT OF JADE DANNER

Ms. JADE DANNER. Aloha Senator Inouye, Representatives Abercrombie and Mink. Thank you for this opportunity to testify in support with amendments of S. 2899 and its companion H.R. 4904.

I believe firmly that, although this bill will not solve all of the issues that confront native Hawaiians, it is a good first step. I want to thank you for your willingness to work with us in changing the bill prior to its introduction, and hope that you will continue to work with us to address concerns that have not been addressed to date.

I anticipate that this bill will receive some opposition from those who either feel there is no constitutional basis for native Hawaiian autonomy, or that this bill violates the stated desires of Queen Lii'uokalani for her people. Those opposed to this bill based on a Constitutional argument do not understand the nature, purpose or history of the United States' recognition of its political relationship with its indigenous peoples. The mantra "we are all Americans" reveals a selective view of what it means to be an American, how one becomes an American and the necessity of choice in the matter. It also illustrates a narrow view of the reasons people create a government and establish a territorial base in the first place.

The United States was founded in order to establish a territorial base to protect and perpetuate a specific set of beliefs and a specific way of life. Without it, the American belief in government of the people would otherwise have been extinguished under continued English rule. Those colonists, and every immigrant since, chose, for themselves and their descendants, to abandon their own countries, their original ways of life, and live by an American standard. By example, on my German father's side, his grandfather made the choice to abandon Germany and become part of another people. He left knowing that the German culture and people would continue to thrive in Germany. Not even being defeated in both World Wars has threatened the German way of life or their ability to choose their own political structures. No choice to leave our homeland was made by any of my Native Hawaiian mother's ancestors. We suffered no defeat in war, and yet our way of life is threatened.

The theory of democracy requires a government to have the consent of those governed. Yet there has been no affirmative statement by the Native Hawaiians to freely consent to the United States' rule. We have not chosen to abandon our original ways of life in our own homeland. America chose to impose its way of life upon us. At best, the plight of the indigenous peoples of the United States can be described as making the most out of bad situations. As Hawaiians, the continuation of our way of life, our language, our beliefs, our knowledge of the environment, all of that is contingent on our ability to make the decisions that impact us the most.

This bill does not create special racial rights, it acknowledges the rights of Hawaii's original people to choose. The United States policy on self-governance affords indigenous peoples some aspects of the choice that was afforded to all immigrants when they came to America, to live as a native in your own homeland or to live as an American in America. The challenge for native Americans, native Hawaiians, Alaska Natives, of course, is to walk in both worlds be-

cause both worlds exist in the same territorial bounds. America sits on our homelands.

Eventually, the United States learned that the indigenous peoples are not a threat to its democratic society. It was a lesson many indigenous peoples paid for with the loss of language, cultural and religious practices, ancestral and sacred lands, and unfortunately, in some instances, their very existence as a people. America learned that we are one of its best features because we are a constant reminder of its founding principles; that justice, diversity and freedom of choice is good for a government "of the people."

Denying the injustice against Native Hawaiians and our rights is to condone it, to support it, and to bankrupt our democratic society with it. This bill cannot undo the harm, but it is the first step in a long process of returning my people to self-sufficiency and self-governance. It can begin by providing a space where Hawaiian values and ways of life are not in direct and perpetual conflict with the ability to house, clothe, feed and protect our children. It is the first step to being able to truly protect our sacred sites, kupuna 'iwi and our fragile ecosystem while developing economic opportunities and moving toward a better and more just Hawaii in the new century.

As other States have realized, greater autonomy and control for Native peoples results in better conditions for all, statewide. I know that in the coming years the State of Hawaii will realize the myriad of benefits of working in partnership with the native Hawaiian government in solving the challenges that face us all.

For many natives opposing this bill, independence is the only way to remain loyal to the memory of Queen Lili'uokalani and avoid further disappointment by the United States. The hearts of our people still belong to her. The pain of the overthrow is alive today. It is the pain of the betrayal of our Queen's faith in, and reliance on, the United States to uphold its treaties of friendship. It is at the root of our distrust of the United States and its policies. And, although I feel the same hurt, I still support this bill. Lili'uokalani yielded her throne in protest because she believed more firmly in something else, the continued life of our people. She believed our existence on this planet was more important than any principle of law or existence of sovereign government. She decided not to wage war to save our lives, and on that decision she was right.

Now our people are among the worst in every kind of statistic from poor health, to homelessness, to poverty and incarceration. Our way of life is in danger of being lost and our people are suffering because policies and decisions that impact us most are made by people who do not represent us, and are not accountable to us.

We need an enforceable measure of autonomy and control in our future as a people if we are going to be able to continue to exist as a people. I ask that you pass this bill with the amendments I have outlined in my written testimony.

Thank you for this opportunity to testify before you today. I really believe this legislation is the first step to rectifying the injustices of the past and providing an opportunity for the Native Hawaiian people to secure better futures for our children. Thank you.

[Prepared statement of Jade Danner appears in appendix.]

Senator INOUYE. Thank you very much. Yours is a very important statement and I appreciate it very much.

May I now call upon Mr. Kauihama.

STATEMENT OF KEOHOKUI KAUIHAMA

Mr. KAUIHAMA. Aloha and blessings to all the Kanaka Maoli out there. [Greeting in native tongue.] My name is Keouokui Kauihana. I am representing my family, friends, and community. I am a Kanaka Maoli, the aboriginal people of these islands.

The Kanaka Maoli were the only people that populated these islands prior to the coming of Captain Cook. No other ethnic group of people lived here prior to Cook, only the Kanaka Maoli.

When Captain Cook first arrived he called these islands the "Sandwich Islands." The name was changed to the Hawaiian Islands, or Hawaii. If these islands were still called the Sandwich Islands, the people living here would not be called Hawaiians, but Sandwiches. [Laughter.]

The aboriginal people would still be called the Kanaka Maoli, and the other ethnic groups of people would be called the geographical location of residence, which is done throughout the world.

Now, using this example of name calling, it is obvious that the Kanaka Maoli is the proper and perfect name to identify the first comers to these islands. Not Native Hawaiians or Hawaiians who consist of the other ethnic groups.

For over 100 years the State and Federal Governments have misidentified the aboriginal people. This special relationship must end.

In 1893, with the help of the United States Navy, the sugar plantation owners staged an illegal overthrow of a friendly government allied to the United States of America. The Hawaiian Kingdom was illegally annexed through a resolution to America. After the overthrow it was illegal to speak your language, to practice your customs, to use your national lands, and to call yourself a Kanaka Maoli. Illegal. It is clear that the Hawaiians with the help of the U.S. Navy overthrew the Kanaka Maoli people who have the inherent sovereignty over these lands.

Because of these testimonies of fact, I and my ancestors of past, present, and future object to this bill that would give my status to another. This special relationship will not be tolerated by the Kanaka Maoli. The rights and privileges that this bill gives to Native Hawaiians rightfully belong to the Kanaka Maoli.

With the passing of this bill, you, the joint hearings committee, will be completing the cycle of genocide which started of the overthrow and exists to this very day with this bill.

This is an unlawful State that uses American jurisdiction to ignore Hawaiian Kingdom laws. Kanaka Maolis are presently being tried with prejudice in the Hawaii State courts. Because he is not a citizen of the United States he may not participate in public office elections. Under United States jurisdiction the Kanaka Maoli is a criminal and a fugitive.

The only alternative was to represent himself. A grass-roots initiative called the "lawful Hawaiian government" with 48 delegates representing all the islands was formed to address the Kanaka

Maoli and reinstate his office which was once called the Hawaiian Kingdom.

We pray that you, the joint hearings committee, now see the light and dismiss this chameleon bill and recognize the Kanaka Maoli as the aboriginal people who claim sovereignty over their lands, which now constitute the State of Hawaii. We urge you to support the position papers submitted to the American and State governments by the lawful Hawaiian government, and to acknowledge we secured when we were a constitutional Kingdom. We pray that you, the joint hearings committee, acknowledge our true identity and support our self-determination as an independent sovereign nation.

May the all mighty guide your thoughts and hearts. Blessings to all people near and far. And I just wanted to add to my testimony, which I heard earlier today, that this committee acknowledges the illegal overthrow. If this committee acknowledges the illegal overthrow you must also acknowledge the illegal annexation.

Mahalo.

[Prepared statement of Mr. Kauihama appears in appendix.]

Senator INOUYE. I thank you very much, and may I now call upon Mr. Fyfe.

STATEMENT OF KAI'OPUA FYFE

Mr. FYFE. Aloha, greetings to the Hawaii Congressional Delegation and members and staff of the Senate Committee on Indian Affairs and the House Resource Committee.

To Senator Akaka, I extend my sincere wishes for his speedy recovery from this recent surgery.

At the same time, I solicit prayers of support for Henry E. Smith, Jr. and his 'ohana. Henry suffered a stroke on our home island of Kauai last week as he continued to strive for the attainment of self-determination. Henry is the duly elected delegate to the 'Aha Hawai'i 'Oiwi, the native Hawaiian convention, representing Anahola, Kua. We are reminded of the tragic death of Henry's brother, Kahale Smith, who perished in the flames that destroyed him and a defective Hawaiian Homelands residence during the regrettable eviction incident just 4 years ago.

To preface my remarks on S. 2899 and H.R. 4904, I cite what has become my personal self-determination mantra,

> First thing, Na kanaka Hawai'i maoli must achieve unity of purpose; from there the sky is the limit.

That being said, I must inform you that I cannot support S. 2899 and H.R. 4904, as written.

These measures were drafted and submitted to Congress without incorporation of the manao of Kanaka Maoli. These measures were drafted and submitted to Congress prior to the achievement of that absolutely mandatory "unity of purpose."

Basically, S. 2899 and H.R. 4904 are not pono, they are not appropriate, and they are not grounded in any way in the manao of the Na kanaka Hawaii maoli. Instead, they are grounded in the environment of fear and greed that runs rampant today. Fear of the loss of Federal funding for native Hawaiian programs. Greed for the anticipated riches to be gained as a result of Federal recognition as indigenous native Americans.

If we only like money, short-term, these measures are the way. If we like long-term open options for self-determination based on that pono "unity of purpose," we must oppose them.

I cannot support S. 2899 and H.R. 4904, as written.

On July 30, I participated in the development and adoption of a position statement by the executive council of the 'Aha Hawai'i 'Oiwi. It has been officially distributed by mail to all of you. No doubt you will hear numerous references to it throughout the balance of this week's hearings. The following are excerpts from that statement:

The 'Aha Hawai'i 'Oiwi shares the common concern for the protection of the benefits of the native Hawaiian people, but not at the expense of the loss of self-determination as defined under international norms.

With due respect for your efforts, and those of Senator Daniel K. Inouye, and Representative Neil Abercrombie, the 'Aha Hawai'i 'Oiwi cannot support the Akaka recognition bill, S. 2899, or the companion measure H.R. 4904 as introduced on July 20, 2000, which measures define the rights of native Hawaiians as synonymous with those of native Americans.

And,

Further, this bill attempts to duplicate and replace the actions of the 'Aha Hawai'i 'Oiwi, an entity duly empowered by twenty two thousand two hundred and ninety four registered Hawaiian voters; thus this bill usurps these taro roots efforts, this native initiative.

Further, I fully support the following manao as expressed by Reidar H.K. Smith, an active delegate to the 'Aha Hawai'i 'Oiwi. He is one of the several delegates who represent the kanaka Hawai'i maoli who reside outside of Hawai'i ka Pae 'Aina.

Reidar says:

One hundred and two years ago the U.S. Congress passed a joint resolution annexing Hawaii as a Territory. Nobody ever bothered to ask the Hawaiian people what they wanted. Some of the leaders of Hawaii at that time thought that being a U.S. Territory would be best for the Hawaiian people. These leaders thought that, like children, Hawaiians weren't ready to decide for themselves or make such an important decision. Our kupuna were never offered the vote to accept or reject that congressional resolution. Yet, their petitions against annexation (still on record) show they would surely have rejected it.

Today the U.S. Congress and some of our leaders in Hawaii are trying to do it again. They propose to recognize us as native Americans to give us indigenous rights and save some entitlements already approved by Congress. What they don't tell us is this may also take away our rights to the ceded lands, shorelines, ocean economic zone, and gathering rights. This bill also diminishes the greatest right of the Hawaiian people, the right of self-determination. Hawaiians have the right to choose between indigenous rights or the right to reestablish our sovereign nation and then choose the type of government for our nation. We even have the right to choose to remain with the status quo.

I oppose this bill as presently written, says Reidar, because it puts the cart ahead of the horse. It determines what rights Hawaiians will receive and then calls for a roll of all Hawaiians who will choose which form of government we want on our reservation. Why not get that roll first so that Hawaiians can make both decisions? This time let the Hawaiian people decide. The 1993 U.S. apology bill asked for reconciliation and offered the next move to the Hawaiian people, not to this Congress. "This bill is deja vu 1898 all over again."

Mahalo a nui loa for your time and consideration.

[Prepared statement of Mr. Fyfe appears in appendix.]

Senator INOUYE. I thank you very much Mr. Fyfe.

And now may I call upon Mr. Cutcher.

STATEMENT OF KAWIKA CUTCHER

Mr. CUTCHER. Aloha everybody, my name is Kawika Cutcher, I'm from Anahola, Hawaiian Homestead beneficiary.

The issue of our islands has been one of abuse by the overthrow descendants to the illegal overthrow to Federal judges opening office of Hawaiian affairs to non-Hawaiians. The outlawing of our native tongue by the forces of evil and the State of Hawaii until 1980, the 30,000 Hawaiians who have died on the Homestead list countless others who have had their homes quiet-titled by foreign companies and the loss of Hawaiians homes inventory which has been quiet-titled away by special interest groups which is a Federal trust. To the denying of our fishing and hunting rights, et cetera.

Public Law 103–150, the Apology Act. As I see it there is no return of the lands, no repayment of back rents and apology for what? My family has been in these islands since 120 A.D. My tutu Christine Mokuaikai Malao Queen Lili'uokalani's funeral when she was in school. My tutu man, Kalei was a supporter of the monarchy. My tutu man, Kalei, fought in World War I and is buried in Hanapepes Veterans cemetery. My kaoi served in the Korean War as a nurse, and my dad as a combat engineer. My younger brother served in the Navy and is a sheriff in up-State New York.

I served in the U.S. Army Eighth Military Intelligence as a pathfinder connected to the 7th Special Forces Group. My squad leader was an American Indian, his name was Billy Mack, from South Carolina, a full-blood Cherokee. His homelands were protected by Federal law and his tribe was sovereign on their homeland by Federal recognition.

The key to my testimony is the word "if" his homelands were protected by Federal law and his tribe was sovereign on their homelands by Federal recognition. They had control over their government through a tribal council police departments, hospitals, schools and even casinos. We as Kanakas don't have any control over any of our lands, ceded lands, harbors, airports, Hawaiian homelands, et cetera. Crown lands. "If" Federal recognition will put our lands in our hands then I would support it. If Federal recognition is to protect our kupuna from having their ancestral 1.8 million acres of ceded land from being quiet-titled I would be for it. If it is a step to gain self-worth for our children, I would be for it. If it helps control the drug problems on our homelands, I would be for it. If this bill can change the Hawaiian Homes Act to its original intent by Prince Kuhio to one-thirty-second blood quantum I would be for it. I would support it. As a kanaka I am saddened by the state of my peoples' plight. Because all of the promises from government representatives, all the lies and stealing of our lands by countless foreigners and corporation, all using the word "Aloha" all the way to the bank while my people suffer from drugs, alcohol, cancer obesity and most of all broken hearts. When I look at Hawaii 1,000 tears of aloha fall from my eyes these United States were founded on God's word "Thou shalt not steal." Part of the Ten Commandments, what has happened to America? What has she become? Has she become an immoral degenerate or has she become a prostitute? What has happened to the foundation of these United States, that was founded on God Law, thou shalt not steal, thou shalt not covet, thou shalt not take what is not yours. I don't understand. We, what

has happened to my people over the last 100 years? We have been brainwashed, lied to, stolen from, our lands have been exploited, and our culture has been sold for dollars. Our language had been outlawed until 1980, but my people through all of this have survived. We even have protected the overthrow descendants who overthrew the Queen by laying down our lives in America's wars, and some of us did not come home.

If this Akaka bill is the first step to fixing the anger, hurt, tears, blood, the land base, the 1.8 million acres of land, 220,000 acres of homestead, the crown lands, then I will support it.

But you must also remember we are Kanaka Maoli, not native Hawaiians. We are Hawaii's aboriginal peoples with a distinct history from our great migrations across the Pacific to our [native word]. Our people are a chosen people, we knew the stars, and the planets' peace, and yet we're warriors. What binds my people together is our koko blood. Even if we have differences of opinion we are still the same people through the blood. This is a link which makes us all connected.

Some of my people get angry when they think we are Indians, we are not. There is a common history of lies, stolen lands, genocide, and even Hawaiians being killed, just like the American Indians. We as a people may have many views such as restoring the Kingdom to of Hawaii to a nation within a nation, but the committee must always remember we are Hawaii and we are it aboriginal people. We come in many colors, and many sizes, with many different views, but we all agree on these basic things; stop stealing our lands. Repay what you owe us, the ceded lands, the $140 billion in back rent that the Federal Government owes, and the $220 billion that the State of Hawaii owes for illegal use of the harbors and airports. Also stop the amerifornication and colonial fascism on our island homelands by the forces of evil. Stop the quiet-titles, adverse possession, quit claims, and exploitation of our lands.

If this bill can stop these things and help my people on the road to reinstate our Kingdom, then I will support it with all my manao and aloha. I am tired of broken promises by government people. I am tired of reading, almost daily, that a kupuna's land has been stolen. I am sick of some non-Hawaiians using the 14th amendment of the U.S. Constitution to justify their ancestral sins. The 14th amendment of the Constitution has to do with freed Negro slaves.

I am sick of some of my own people supporting the people who want to steal every penny of every Hawaiian trust, that has been set aside for our children's children. I ask as a Veteran and a Kanaka Maoli to help my people and 1,000 tears means this: 1,000 tears. Lonely nights blow across our land, tutu wahine stands alone across the fence. A tear falls down her eye, it's gone. Her home has been taken through a quiet title. The real estate agent says it never was hers. Three hundred years growing taro and countless Eiki. Children running, crying and even dying. Plastic is their love for our aina. In each tear a generation is lost, she can't understand why, what has happened to her home? I see her in my dreams. I cry tutu. She was with the Queen on that terrible day, all the tears falling like rain. Her son with a net in hand loves the land. His heart is in the seas swimming with the naia. His hope is in justice

but from outside the fence. His tears flow blood of a young warrior. His father's white hair tells a tale of hardship in his own land. His heart longs for freedom from oppression but no one sees.

Tonight I cry for my son. What will he see, from what side of the fence. My bones grow weary but tutu's tears fill my eyes. Hawaii what have you done to your native son.

Thank you, mahalo.

Senator INOUYE. Thank you very much, and now may I call upon the following witnesses; Kamealoha Smith, Joseph Manini, Sr., Punani Rogers, Ray Manaku, and Judge William Fernandez.

May I first recognize Kamealoha Smith.

Mr. SMITH. If I could, is it possible for me to defer to Mr. Manini and then to the Judge first and then I'll go last?

Senator INOUYE. Joseph Manini, Sr.

STATEMENT OF JOSEPH PUNILEI MANINI, SR.

Mr. MANINI. My name is Joseph Punilei Manini, Sr. To the Senate of the U.S. Congress, Senators Akaka and Inouye, this is my oral testimony. I had a testimony that I sent in.

I am Punilei, the Crown Puni, Poo or executive of this dispensation by genealogy, a descendant of Puni, Native Kanaka Maoli Poo, or executive, of the Archipelago chain of Islands marked by survey as the Polynesian Triangle of the Pacific Ocean and aborigine who migrated and inhabited these Islands in 200 B.C., a private estate.

The people of these Hawaiian Islands have the rights to become citizens of the United States and be entitled to its privileges. Whereas, the United States, by its Congress, claims no jurisdiction or franchise over the Polynesian Triangle of the Pacific Ocean.

Whereas, the lands of the Hawaiian Islands are a portion of the Archipelago chain of Islands marked by survey as the Polynesian Triangle of the Pacific Ocean and domesticated in 1839 A.D. by Kamalu, a relative of Puni, the Ruling Chief of Polynesia, dressed with the red feather cloak and headdress.

The sovereign native Kanaka Maoli nation of the Polynesian Triangle is composed of 12 tribal families; Kanaka Maoli, indigenous, 200 B.C. migration; Hawaiians, 56/64 B.C. migration; Tahitians; Maoris; Samoans; Roratongans; Aitutakians; Togans; Mangaianes; Maukeans; Ra'iateans; and Marquesians.

This native Kanaka Maoli nation has always been a sovereign nation of the Pacific Ocean since 200 B.C., there is no record recorded of this nation being overthrown.

I am in opposition to this Congressional bill, S. 2899, to disband our indigenous Kanaka Maoli natives who migrated and inhabited these islands in 200 B.C., 150 years before the migration of Hawaii loa, which landed the Hawaiians in 54 B.C. of this same family unit.

Therefore, as the grantee of this estate I am in opposition of this U.S. Congressional bill, S. 2899. Please take it back to the drawing board. From Mauka to Makai the river of justice must flow freely. Your native Hawaiian citizens of the United States do not have jurisdiction or franchise over the lands of the aborigine or earliest known inhabitants the original indigenous Kanaka Maoli native who migrated in 200 B.C. to these archipelago chain of islands, marked by survey as the Polynesian Triangle of the Pacific Ocean,

of which the Hawaiian Islands are a portion. Examine "exhibit B" on the back. The 1890 census is plain and documented in the District of Lihue, Island of Kauai, both men and women natives were recorded as Kanaka Maoli of these islands. This is in 1890, way after Captain Cook.

Restitution of our heritage. The nation of the United States of America, by its Congress and its President is with full authority to rectify this wrong that they have imposed on the aborigine, indigenous Kanaka Maoli Native of the Polynesian Triangle of the Pacific Ocean, and to reestablish their sovereign nation by returning our rights and possessions of ownership to all of their properties and assets, et cetera. The rightful owners as documented within this instrument, Title Deed Docket No. 99–193279, as recorded in the Bureau of Conveyances of the State of Hawaii. Examine "exhibit A." in the written testimony.

Final conclusion. I sincerely extend my deep appreciation to the Senate of the Congress of the United States for your receipt of this document, a complaint of which is self-explanatory, that the jurisdiction and franchise over the Archipelago chain of Islands marked by survey as the Polynesian Triangle of the Pacific Ocean, of which includes the Hawaiian Islands, is a pubic record in the Bureau of Conveyances of the State of Hawaii, as Title Deed Docket No. 99–193279, and certified December 7, 1999, in Honolulu, Oahu, as a private estate in whole, and not belonging to the United States in part.

Mahalo.

[Prepared statement of Mr. Manini appears in appendix.]

Senator INOUYE. Thank you very much.

And now may I call upon Judge William Fernandez.

STATEMENT OF WILLIAM J. FERNANDEZ, JUDGE [RETIRED]

Mr. FERNANDEZ. Thank you Senator Inouye and distinguished Congressmen and also my fellow Hawaiians.

My name is William J. Fernandez. I am a retired Judge. I went to Kamehameha Schools, a school for children of Hawaiian ancestry. I graduated from Stanford, and I am president of a regional association of the Kamehameha School alumni. I am also an officer of the Board of Presidents of the Kamehameha Schools Alumni Association, and I speak on behalf of myself, my alumni constituents, as well as a representative of the Board of Presidents I have just described.

I have reviewed your proposed legislation, I've read the Mauka to Makai documents, I have reviewed innumerable Federal cases, as well as the *Rice* v. *Cayateno* decision and analyzed that decision, as well as its ramifications. I have reviewed the Indian Reorganization Act as well as the Board of Indian Affairs regulations as it involves tribal organizations and rights.

And I will tell everyone, that our Hawaiian people desperately need your legislation. Since annexation to the United States we have not had representation at the bargaining table of rights. Yes, we did lose our sovereignty with the overthrow of Lili'uokalani. Yes we lost our Crown lands and the government lands and these lands and properties were transferred to the United States during the course of annexation. We had no advocates, we had no government

that spoke for our people, and this bill is 102 slow in coming. But it is necessary that we have representation at the bargaining table of governments. We did not have that representation at the time of Organic Act. We did not have that representation at the time of the Hawaiian Homes Act, although Prince Jonah Kuhio did the best job he could to protect Hawaiian rights. We did not have representation when we in Hawaii became part of the United States in 1959. We have failed to have that representation even today.

I feel the pain of our Hawaiian people. I grew up in Kapa, Kauai during the thirties and the forties. I saw the Hawaiian people living without housing, often without food and in poor health conditions. I saw that the Hawaiian Homes Act was a cruel hoax to our people. I know the suffering that they have, because I grew up in the era when Hawaiians were not really citizens. That there was discrimination against us.

Yet, I would rather be a citizen of the United States than a citizen of Great Britain, Russia, or Germany, all who have expressed interest in this country. I think this is the finest and fairest country that has ever been on this Earth, despite all its faults. Our Constitution of the United States is the law of the land and I believe in that Constitution and that it must be respected, and that we must work within the system.

In *Rice* v. *Cayetano* Justice Bryer said there is no trust relationship to native Hawaiians. Justice Kennedy, who wrote the lead opinion said that in every piece of legislation dealing with Indian tribes it singles out for special treatment a constituency of tribal Indians. Every piece of legislation. I hope we all realize that of the 150 pieces of legislation, including the Hawaiian Homes Act, we could lose it because we do not have a trust relationship and we do not have a constituency, which is key. And the Constitution must be obeyed.

Now, I also speak to our Elie trust. Through the kindness of Princess Bernice Pauahi Bishop she created the Kamehameha Schools, which gave Hawaiian children like myself an opportunity to receive an education. And to then move on into the world and to compete in a very, very competitive world.

And I know the threat to that great wisdom, that the Princess had for her people, because that's what the Elie did, they took care of their people, that is presently proposed by the United States Constitution and the *Rice* v. *Cayetano* decision.

We of Kamehameha who want to continue to educate our children in perpetuity, our Hawaiian children in perpetuity, need your legislation. Our constituent members, and we have polled from Washington, DC, the Eastern Seaboard to Hawaii, from Texas to Montana, and I'm going to include all the States in that group because our alumni is spread throughout the Nation, have adopted this resolution and I will read it to you:

Whereas, in view of the United States Supreme Court's decision in *Rice* v. *Cayetano,* the status of native Hawaiians as a recognizable group of people with special preferences similarly afforded to our indigenous peoples in the United States is in serious jeopardy; and

Whereas, without this recognition the policy of the Kamehameha Schools to give preference to applicants of Hawaiian ancestry and therefore perpetuate the legacy of Princess Bernice Pauahi Bishop could be discontinued, and

Whereas, as a people, those of Hawaiian ancestry may in fact not be legally entitled to any special treatment or federal benefits without the protection of this proposed legislation;

Now therefore, be it resolved tl.at the Kamehameha Schools Alumni Association through its regional boards of directors and its Board of Presidents, committed to protecting the legacy of the Princess, to furthering the vision and mission of Kamehameha Schools, and to supporting programs which benefit the health, economic and educational welfare of the Hawaiian people;

Do hereby support the efforts of the Senators Akaka and Inouye to pass legislation, which will provide a legal basis for native Hawaiians to have the recognition, status, and consideration, afforded other indigenous peoples of the United States.

Be it further resolved that this resolution be submitted to Senators Akaka and Inouye by a representative of the Board of Presidents prior to or at the hearings on their bill scheduled for August of this year.

The alumni of Kamehameha Schools respectfully asks Congress to embrace and expeditiously enact this legislation. We ask for Federal recognition of native Hawaiians and a mechanism to establish a trust relationship between our peoples.

Thank you very much.

[Prepared statement of Mr. Fernandez appears in appendix.]

Senator INOUYE. Judge Fernandez, on behalf of the committee I thank you for your very profound statement. May I now call upon Kamealoha Smith who will present the testimony of his father, Henry Smith.

STATEMENT KAMEALOHA SMITH, ON BEHALF OF HIS FATHER, HENRY E. SMITH, JR.

Mr. SMITH. Aloha everybody. My name is Kamealoha Smith, I'm from Anahola Hawaiians Homestead and unfortunately my dad has taken ill so he wasn't able to present his testimony this morning. Therefore, I'll be doing it on his behalf. I did want to share some things about my dad first, before I actually give his testimony. I would be remiss if I didn't remind myself of what a great man he is and some of the things he has done in the Hawaiian community, and certainly for his children, to get us where we are today. Of course, having grown up on the Homestead some of the things that we did when we were small, we used to go down to Anahola Bay, and we used to go to the mountains to get some of the wild taro. In thinking about how my dad raised us I think a lot of what he does in terms of, you might call it, Hawaiian activism kind of stuff, that he always felt that if the laws that govern the land and the laws of the land didn't match up he felt that the land really wasn't all that [native word]. It is in spirit that he feels that the laws that govern the land and the natural laws don't match up. I know that his trying to work on behalf of the Hawaiian people, and certainly his family, is that what he is really trying to do, in my opinion, is bring about some pono into what is going on in the situation right now. Having said that I'll just go ahead and read his testimony.

My name is Henry E. Smith, Jr., I am a Kanaka Hawaii Maoli, born and raised in the Hawaiian Isands since April 27, 1936. I waive none of my Kanaka Hawaii Maoli rights, my inherent rights and also my vested rights to the lands, air, water, minerals, fishing, and our 200-mile zone limit around the Hawaiian Archipelago.

I believe that our Hawaiian nation is still in existence, but held in suspension temporarily. I'm for total independence, restoration of our Hawaiian nation.

I believe that Senator Akaka's bill will take away our Kanaka culture, rights, language, religion, fishing, hunting, lands, water, air, and et cetera. In Public Law 103–150, the Apology Bill, it states that; "Whereas, the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or

over their national lands to the United States, either through their monarchy, or through a plebiscite or referendum."

I think he sarcastically says, "Well, guess what?" The Fifth Circuit Court on Kauai denied my claim to my inherent right to my national land. Do I believe in the U.S. Justice system? No, no, and a thousand times, no.

I honestly believe that the United States of America is out to extinguish the Kanaka Hawaii Maoli. The United States of America has stolen a nation, has stolen their language, has stolen their land, has stolen their water, has stolen their air, has stolen their minerals, has stolen their culture, and has stolen everything else.

I believe that it is time for all Kanaka Hawaii Maoli to stand up and reject the Akaka Bill. This bill is to turn away a proud Kanaka Hawaii Maoli nation and reduce them to nothing, steal their nation.

The United States of America does not practice what they preach, justice, liberty and freedom for all. They have broken the most sacred thing in life that everyone holds dear to their heart and its "Thou shalt not steal." It hurts when a big country like the United States of America has to stoop that low.

And he concludes with: I'm doing this because I want my children and grandchildren to know that I care for my nation and the Kanaka Hawaii Maoli.

There is one thing I did want to add about my father. He is a Korean War Veteran and he has deep respect for America, however, as I stated earlier I think he is really, really concerned about things not being pono right now. And I'm sure that even though he lies in IC of Wilcox Hospital on the Island of Kauai, that his spirit is here with everyone. Mahalo.

[Prepared statement of Mr. Smith appears in appendix.]

Mr. ABERCROMBIE. Thank you Mr. Smith and I am sure we all hope for your father's quick recovery. Thank you very much, thank you Judge. Let's call our next panel. Mr. James Torio, Mrs. Mahuiki-Denson, Sharon Pomroy, and Chipper Wichman. Mr. Kaleikini is going to take Mr. Denson's spot.

We will start with Mr. Kaleikini. May I thank you personally Mr. Kaleikini for your assistance and your goodwill.

STATEMENT OF ARTHUR KEAWE-KALEIKINI

Mr. KALEIKINI. Mr. Abercrombie, thank you very much. I would like to give you a little background on my personal life. I come from a family of nobility who is my grandfather, as I stated earlier was Timothy [native name], secretary to Kamehameha III, and who was sent as a delegate from the Kingdom of Hawaii to the United States and to Europe, or to England.

To you Kanaka Maoli I understand what this resolution is doing to all of you and I am against that. There are some of you that may think why? Well, first, we, as Kanaka Maoli of Hawaii looking at you who were born within the realm of 1930's on up are a citizen of the United States. But I say to you, because of the way the laws were constructed by the taking of the government, I want to remind you again, if you look at the history four men do not constitute the overthrow of this Kingdom, they stole it with the help of the U.S. Government. Four men do not constitute that over-

throw. What they did and what Lili'uoakalani did from the second floor of the palace, she went like this to the people who were scattered not to fire a shot because if they did then it would become a legal overthrow. And she begged the people not to do that. My grandmother and my mother were up on the second floor. They were like many of your grandparents, who were chambermaids for the Queen in her palace ground and in her home, wherever she went. They knew of her intent and long vision.

Concerning the bill that we have here, I am against it because of the fact that the history of our family tells us this. People speak from one side of their mouth and talk the other side when everything is put into perspective for their own purposes.

Our lands have been stolen, but I tell you one thing, these lands would be given back to you, each and every one of you who sits here today would like to have it back. And I tell you how this can be done. If you are willing to sacrifice who you are today as you are a citizen to take up the ballot box in 2 years to become a citizen of the Kingdom. We have 48 men in place to run a government but the structure to do this will be up to you. Let us stop the genocide of our people. If we don't it is going to continue. Look at your children. The body of government officials that sit here were voted into the office by we the people.

The recognition of becoming a State I say to you a lot of our kupunas, our parents did not vote in that election because they knew what was coming down and today this is the result. Again, history tells us. And most of you who understand who you are, where you come from, I say this to you, if you study religion and study your ancestors path we, the Kanaka Maoli, when the time of Able the language barriers were turned the laws placed upon our people, the language that was taken away from us. And from there Levi brought his people to the United States. From there Hagaar brought our kupunas here to Hawaii. Hawaii law as we know it him today is Hagaar.

So, people of Hawaii, who are we? I am 100 percent Kanaka Maoli Hawaii like you are and I say to you, are we Indians? Think again, no. We are Kanaka Maoli, we had our languages and thereby we have our tradition. So I say to you Senator Inouye, Senator Akaka, Representative Mink, and Representative Abercrombie, for those who are in favor that is their privilege, but for most of us it is not our privilege to be on this resolution that you have there. You have to look at other avenues but I say to you we, if you are working for the Kanaka Maoli, we need the Kingdom of Hawaii restored in its proper place and recognize that stolen government by four people does not constitute the overthrow. It's a stolen land and a stolen kingdom. I say to you, look in that direction and you will find what I said here is true. Thank you very much.

Mr. ABERCROMBIE. Thank you. Mrs. Mahuiki-Denson?

STATEMENT OF LEILIWIN MAHUIKI-DENSON

Aloha, my name is Leiliwin Kalei Mahuiki-Denson. I am a full-blooded Kanaka Maoli. I have four children, and as for me and my ohana I would like the United States to give back what is rightfully ours. Give back the land, the tears, and pain, our language and nations. Anything less and I will say A'ole, no.

The devastation caused by the United States was like that of something I have seen, like Hurricane Iniki. Everything was taken from us, our ancestors. We are the Kanaka Maoli people who have lived here for 17 centuries on these islands. Self-reliant people, with respect for all living things.

In only a decade we have repaired much of what Iniki did. The devastation our ancestors saw as our Kanaka Maoli people declined or were wiped out. From 800,000 in 1778 to just 33,000, 115 years later.

Queen Lili'uokalani had many who would have killed and died for her, but she was not willing to lose one. In a carefully worded statement she yielded to U.S. President Grover Cleveland. Our Queen believed U.S. justice would prevail. She died waiting. My father died waiting. Am I to also die waiting? Maybe.

A decade has done much for Iniki's devastation; 104 years and we have made no progress for us, the Kanaka Maoli. We suffer. The provisional government burned my ancestors homes to the ground in Kalalau chasing the Ko'olau, a Kanaka Maoli and his family who had contracted leprosy and did not want to be deported. I have enclosed a story, as evidence.

All of our families' lands in the NaPali were seized unfairly, unconstitutionally. Will the bill help us to receive justice, or is it like Public Law 103–150, a ghost, an illusion? Nothing has changed since 1993. Will anything change after this new bill? I do not want our name to change. We are Kanaka Maoli, we are not native Hawaiians or native Americans. I see and say this is a lie. My manao is give back our national lands and money and we will take care of ourselves. Stop calling us native Hawaiians, it is insulting and shameful. And let not my words, but that of our beloved kupunas guide you.

Queen Lili'uokalani wrote and stated:

I shall not claim that in the days of Captain Cook our people were civilized. I shall not claim anything more than has been already attested by missionary writers. Perhaps I may safely claim even less. Admitting the criticism of some western visitors who are not missionaries that the habits and prejudices of New England puritanism were not well adopted to the genetics of a tropical people. Where else in the world's history is it written that a savage people made equal progress in civilization and Christianity, in the same space of time? What people have ever been subjected to such a flood of external demoralizing influences while four-fifths of the population of our islands were swept out of existence by a vice introduced by foreigners? The ruling class clung to Christian morality, loyally clung to the brotherly alliance made with the better element of foreign settlers, given freely of its sons and daughters to cement and to prosper it. Will it also be thought strange that education and knowledge of the world have enabled us to perceive that we have some special mental and physical requirements not shared by other races. Which have come among us that certain habits and modes of living are better for our health and happiness than others and that a separated nationality and a particular form of government are best for us? These things remain to us until the pitiless and tireless annexation policy was effectively backed by the Naval power of the United States. It had not entered our hearts to believe that these friends and allies from the United States would ever seize our nation by the throat and pass it over to an alien power. Perhaps there is a kind of right. Known as the right of conquest, under which robbers and marauders may establish themselves in possession of whatsoever they are strong enough to ravish from their fellow man. If we have nourished in our bosom, those who have sought our ruin, it has been because they were of the people whom we believed to be our dearest friends and allies. If we did not by force resist their final outrage it was because we could not do so without striking at the military force of the United States. The people of the islands have no voice in determining their future but are virtually relegated to the conditions of the tyrant nation, the United States. These are the facts, let us never forget. Let us move forward toward justice

led by our kupunas and Aumakua. Free in our hearts until things are pono in our homelands, Hawaii.

Aloha, mahalo and may Akua-God guide you to do what is right. A Hui Hou.

[Prepared statement of Mrs. Mahuiki-Denson appears in appendix.]

Mr. ABERCROMBIE. Thank you very much.

Mr. Wichman, I believe you'll be the last speaker on this panel.

STATEMENT OF CHIPPER WICHMAN

Aloha [Greeting and statement in Native tongue.] I am here today as a kama'aina from the ahupua'a of Hawaiian'ena, speaking on behalf of my family, and most especially for my children whose ancestry goes all the way back to [Native name].

As the descendants of these beings, as our honorable Representative from Samoa presented earlier in his comments, the western and Polynesian perspectives are often very different in how we view the world around us.

What we are here to talk about today is justice, reconciliation, sovereignty. How we achieve these are many different ways.

This is not the first time the Kanaka Maoli have had to deal with this. These lands were taken away at gunpoint before and they were returned.

Our sovereign King, Kau'ikeaouli proclaimed upon the return of our nation what has become out State motto, Ua Mau Ke Ea O Ka 'Aina I Ka Pono. I would like to share a little bit of manao about that today with our committee. Since as was pointed out in the questioning earlier, this is a time of education for all people. This is the forum in which to let people of the United States look at this for 1 minute through the eyes of the indigenous people of these islands. Why was his phrase proclaimed when the sovereignty was restored to the Kingdom in 1843? Ua Mau Ke Ea, the life, O Ka 'Aina of the land I Ka Pono will be perpetuated in righteousness. How is it that the life of the land is perpetuated as a result of returning sovereignty to the original and rightful rulers of this land? In order to understand that, you need to understand from the western perspective the genealogy of the people. When you go back, these islands were first born according to the oral traditions of [native tongue]. These islands were given birth from papa, mother earth and father sky. They also gave birth to oohukalaini who gave birth to nakanaka maoli. So the people have a direct ohana relationship with the 'Aina. The values of how we look at the land, how we make judgments on how these should be managed, how we steward the land, caring for the land as you care for your children. These are decisions that the Kanaka Maoli will make and will perpetuate the 'aha a, the life of our 'Aina.

This is what we're talking about. This is why it is so important for the rightful people to control the destiny of these islands and this land.

I want to support this bill, I really do, but I have fears that this bill will in some way give up the ultimate right of the indigenous people of these islands to self-determination. And, I have heard discussion this morning about the fact that it doesn't. I want to urge the authors of this bill to seriously consider an amendment that

would clarify for everyone that this bill in no way diminishes the rights of the Kanaka Maoli to self-determination. That it in no way relinquishes or jeopardizes the ceded lands, that these lands must be returned to control of Kanaka Maoli.

If these things, as brother, Kawika Cutcher said so well, if, all of these things can be assured, then yes, I would like to support this bill. For I view sovereignty as a journey. This is not the end of it but this I believe could be a very, very important step along that journey. But we need to ensure that it is not a dead-end, that indeed it's a stepping stone. For we all know the political game.

We are sitting here today talking about legislation that is based on the Apology Legislation. Well, when this passes, this will in turn become a stepping stone for something else. So we need to ensure that it is properly written and does indeed support the ultimate self-determination of the native people of these islands.

Mahalo.

[Prepared statement of Mr. Wichman appears in appendix.]

Senator INOUYE. I thank the panel very much, and now may I call upon the next panel. Butch Kekahu of Kealia, Cheryl Loveli-Obatake of Lihue, David Denson of Kapaa, Joseph Reyes of Eleele, Judy Naumu Steward of Kekaha, and Kenneth Bray of Kapaa.

May I now recognize Mr. Butch Kakahu.

STATEMENT OF BUTCH KEKAHU

Mr. KEKAHU. Aloha everybody. Senator I just got back from Washington, DC 2 weeks ago and on that travel was a Hawaiian boy who passed away, Bob Meyers, and we remembered him in our march on August 12. And I did also come back from Boston. Indeed the Hawaiian Boston Tea Party, and I am still trying to follow the route of Queen Lili'uokalani. And what is available to us is the availability to the news media to touch base across the country. That's the kind of freedom we have right now, and mahalo to the media coverage.

This was supposed to be given by my niece, Ilima Kinney, but she's at the hospital with her step-dad, Henry Smith.

I would like to bypass the first part of this testimony.

I wish to express my personal opposition to S. 2899 and H.R. 4904, otherwise as the Akaka bill for Federal recognition. There are many reasons why I strongly oppose this bill, but let me share just three of those with you today.

First, the bill will establish a Federal office of special trustee for native Hawaiian affairs. We have suffered enough under the equivalent of that for many years on the State level. OHA has been woefully inadequate in performing their trust responsibilities to the Kanaka Maoli. For years we have been left with the sad reality of OHA, a State agency, fighting with other State agencies over financial and land resources that rightfully belong to us, the Kanaka Maoli and we are therefore left caught in the middle with nothing. I do not believe that to shift these responsibilities from the State level to the Federal level will make all of the problems inherent in such a plan suddenly disappear. Rather, we will be exchanging one bad idea for another.

Further, it is said that this legislation is now needed to protect Kanaka Maoli assets in light of the *Rice* decision. I would like to

state to you today that I for one do not need any government not of my choosing to help me protect what is inherently mine in the first place. I never chose to be a ward of the State and I certainly do not wish to now become a ward of the U.S. Government.

My people and I are fully capable of deciding our own futures. Please recall that we were doing it long before Cook arrived on these shores and we're both capable and ready to do it now. I do not want nor need a bureaucratic entity an ocean and continent away deciding what is best for me. And most of all, I do not need the permission of the U.S. Government in order for me to live as I choose.

Since the Apology Bill signed by President Clinton in 1993 acknowledges the fact that;

> The indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States.

Then I believe the only appropriate venue for discussion of these issues is between the State Department of the U.S. Government and the Kanaka Maoli people as full and equal partners and nothing less.

Finally, let me say with great sadness that I have been seeing too many of my people die needlessly while waiting for our stolen lands to be returned. These were good people, talented and intelligent people. I have witnessed people being put behind bars, like I have been, simply for standing up for what was rightfully theirs all along. I was one of them. But know that as a people we will not vanish to the sunset. We will resist to our last breath any attempt to perpetuate the wrongs that have been done us.

I know that there are those that will speak today in favor of this bill. I for one cannot. Let us not rush to enact that which will come back to haunt us later. Let us not pass something simply because it may look like our last, best chance in the closing days of the present Administration. Certainly we are worth much more than that. Our children are worth more than that and our future is worth so much more than that.

In honor of my family from Kuai and those around I was inspired from Kamehamaha School grads who encouraged me to take up the work 20 years ago and the only word that was left to be said was [native word], now do you know what that means? I know what it means today. "Not afraid." If you're right and truthful there is nothing to be scared of, it has to come back. Our next and final march will be in five years. This is when the whole United States will leave us alone. We are capable to handle it because we have a great Akua who is looking from above says: "[Native word] we don't want no wimpy people around." Because our children and grandchildren are telling to us, and I walked there 2 weeks ago for the 38,000 people and our warriors, this is not in vain, this is good stuff. And God is part of us and I am proud of everybody being here. Thank you and aloha.

Senator INOUYE. And now may I recognize David Denson.

STATEMENT OF DAVID DENSON

Mr. DENSON. Aloha, aloha panel, aloha people. First I would like to do proper protocol and I will ask Mr. Kamealoha Smith if I may

speak on behalf of the Kanaka Maoli people and on behalf of my children because I am a malahini.

[Response from crowd off microphone.]

Mr. DENSON. [Statement in Native language.] I would like to say first of all that the U.S. Government, my Government, has violated their Constitution by unlawfully taking land without just compensation or due process of law. This has happened over the last 100 years. They have brought in their drugs, their alcohol, and their tobacco, which have poisoned the Hawaiian people.

We do not want this bill. We do not want to be recognized by the tyrant nation that causes more pain and death on this Earth than any other nation. You build more bombs, mines, guns, and land mines that kill innocent children around the world.

We are not the peaceful country we make out to be because when we don't have a war to fight we export our arms, even to people who end up fighting against us, like Iraq. We invaded Iraq and Kuwait to save a small country from a tyrant. We fought in Vietnam, my father won the Medal of Honor, as you did Honorable Daniel Inouye, and the Purple Heart in Vietnam, fighting for his country and to stop communism. We are in a semi-socialist communist state if you have not read the article by Forbes Magazine. The Office of Hawaiian Affairs is in threat right now. That's why this bill is here. Nothing changes for the representatives, nothing changes for the Clinton appointees, nothing changes for the alumni of the Kamehameha Schools.

The Kanaka Maoli people, of whom my wife is 100 percent, have 16 children in their family, none of whom have ever received Hawaiian homelands. Have never received one Federal grant from OHA. They have never received welfare, have never received many of the things that the United States dangles in front of them as a carrot. It is not right. You should set up a tribunal to find out where these stolen lands and crimes are committed. The big island police department is under investigation, so is Kauai Police Department under investigation. If your police forces are not even just, how can we expect justice when laws are passed?

These laws are well meant. The only problem is how to enforce them. When you have corrupt government, corrupt police departments, corrupt head officials, like those who in the Office of Hawaiian Affairs, you will never get anywhere and you will never enact trust. We do not want an Office of Native Hawaiian Affairs. We do not want to see Clinton appointed jobs. Let them go work for their money.

Our lands like Kawika; 17 generations, four of our kupuna buried on the land, OHA turned their back on us. They gave us a native Hawaiian lawyer that charged us $10,000 for doing nothing. And we went to your system with open arms, with humility, nothing. In fact, let me quote the lawyer:

> Because these people have lived on this land for 17 generations, is that to give them any preference than my client who has paid money for it?

I personally think the only way for us to get back our land is war. That's how everybody else got their land back.

If you were in Germany right now you would have a war. If we were in Japan right now we would have a war. We gave those countries back because it wasn't our country.

We do not want reservations. We do not want to kick anyone out. We do not want to disenfranchise anyone, the Orientals, the Caucasians. The Hawaiians have never asked for anything. Even today look whose asking for the Hawaiians, [native word]. It is not the Hawaiian people. You don't see the kupunas ask for anything and when they do you turn your back on them. I always see you talk to your kupunas but when a kupuna asks for something you know what the answer is? No. When we ask for something the answer is no.

How about the ice epidemic now that's on all the islands. Doesn't seem to effect the Oriental and the Caucasian community as much as it effects the Samoan and Polynesian and Hawaiian communities. Why is that? We know why it is. They know why it is. You are genociding our race. My children are 50 percent Hawaiian. I am scared to even put that they are Hawaiian in their birth certificates. You're killing us. Starving us, taking our lands away, leaving us homeless, on a waiting list for 100 years for Hawaiian homes with the worst termite infested homes you could ever want anyway.

We beg you, we beg you, as U.S. citizens of a country that is supposed to be just.

Let me read this from the Constitution. The preamble which is the basis for the United States of America of which I am very proud, even though it has its faults. It was based in order to form a more perfect union to establish justice, fair treatment, to ensure domestic tranquility of which we have not domestic tranquility here in Hawaii because there is no justice. To provide for the common defense, that means the defense of you folks as well as the defense of our rights. To promote the general welfare, that means the general welfare of both the malahinis who come and the welfare of the people who come here.

We build walls to make the airport look nicer. We have motorcades to impress the tourists, but yet no one goes down to Hawaiian homes. No one helps us. The Federal money we are getting is not getting received by the Kanaka Maoli people. It is getting received by the Native Hawaiian who's sticking it in his pockets with both hands. And to secure the blessings of liberty for ourselves and our posterity.

All these people are Americans in their heart. That's all they are trying to do. They are trying to do what my ancestors made this nation for, to make sure that no matter the color of your skin, what your eyes are shaped like, that you are treated equally. That no land or possession is taken from you without a due process of a court that is not biased and prejudiced. We have said here, and you have agreed, dishonorable behavior. We're not talking about dishonorable behavior, we're talking about a crime like the Nazi's have committed. We wiped out 600,000 native Hawaiians, Kanaka Maolis, without a tear and now we are still waiting. We cannot eat paper, and we cannot trust anymore.

What you need to do for this legislation, my amendments would be three things other than scraping the entire legislation.

First, change native Hawaiian to Kanaka Maoli.

Second, change 1893 to Kanaka Maolis to anybody that was here from 1778 and prior, not including Cook, who slept with several na-

tive women on his first night here. Not Cook, or his descendants. Only the Kanaka Maoli people.

And, third, that the native Hawaiian governing council has right over all the lands, and that a native Hawaiian advisory committee for war crimes committed by the United States of American over the 115 years it has forced its rule on these people would be assembled and we will have the right to bring up murders committed, rapes, theft of land, fraud, there's a lot of crimes that have been committed by this Government and we are not going to let them slide.

Start really talking about how helping the Kanaka Maoli people.

All of these people are organizing. This next generation isn't like our kupuna. We no forgive. We know what is bloodshed. Been to Kalihi or Laie lately, brada. The streets will be worse than drowning blood, like L.A.

Start really talking about how to give justice or put the blood of your kupuna and moapuna on your hands when things get crazy. Because you can't live like this forever, you can't live oppressing a people forever. And it's not that hard. There are only a few Kanaka Maolis and they are very humble. They're not like me. They are humble people. They just want enough to eat, they want a place they can lay down their head and sleep, they want to not be poisoned with drugs and alcohol, that's all they want. If you can't give that then this is not the United States of American. This is what communist Russia was.

And I appreciate all your time, I know I've run over my time.

Aloha to all you folks and for the brother from Samoa, you see what's happening, don't let them get too much in there.

Senator INOUYE. Thank you very much, our final witness is Robert Pa.

[Discussion from crowd, off microphone, requesting to readdress.]

Senator INOUYE. Come right up.

STATEMENT OF ROBERT A'OLE PA, GIVEN BY HIS BROTHER, KEKANE PA

Mr. KEKANE PA. Aloha again everybody. I'm here to represent my brother Robert A'ole Pa.

As a Kanaka Maoli he opposes this bill so as a lot of the other kanakas. My brother Robert is living on a national land, Mr. Inouye, Congress, Senators, we have faced the judges today, and what I want the Congress to hear is that my brother could not afford to fly up here, he had his testimony ready to be heard.

We are facing an eviction notice from the de facto government. My brother cannot leave his land because a de facto government of the United States of America and the State of Hawaii cannot remove a Kanaka Maoli off his national land. Therefore, my brother cannot leave that land. If you are a Hawaiian the guys in the blue suit will pick you up because you are an American citizen.

So I just want to show on behalf of my brother Robert, and I stand as well as a lot of other kanakas. It is sad that he cannot leave his national land to be heard for his [native word]. And what I am just trying to get across to the people out here is not sympathy. We all oppose this bill. My brother told me deeply we either

fight for our nation or we find a new way to celebration. And with this bill we will not get that celebration.

Thank you for your time.

[Prepared statement of Robert Pa appears in appendix.]

Senator INOUYE. Before calling the hearings to an end I would like to announce that the hearings will resume tomorrow morning at the same place at 8:30 a.m. We will do our best to convene at precisely 8:30 a.m., so I would call upon the witnesses for tomorrow's session to be here on time.

Before we adjourn for the day, as requested by Mrs. Mink, may I now recognize you? Mr. Faleomavaega?

Mr. FALEOMAVAEGA. Mr. Chairman, I think one of the problems attending to our hearings, procedures and the process, is that I am sure a number of our native Hawaiian community just are not able to attend the meetings because they are held during the day. I am more than willing to assist in any way to accommodate that members of our Hawaiian community, or from the public of Hawaii be heard, maybe even after working hours. I am willing to have hearings during the evenings to enable those members of the community to appear before this committee. I would just like to make that request to the chairman, respectfully. Thank you.

Mr. ABERCROMBIE. I want to make sure that everyone knows that they are filming the proceedings so that if you should miss anything they can see the broadcast. I am not sure what their schedule is but I am sure they will be announcing that.

I want to emphasize also that the record will be left open until September 9, and I can assure you that every communication we receive will receive respectful attention. Every viewpoint will be gone over and incorporated into the final document as it relates to the legislation.

Mr. FALEOMAVAEGA. If the chairman will yield further, I make this somewhat of an imposition, but the last thing I'd ever want to do was to impose myself. The fact that the Honorable Congresswoman Patsy Mink and her constituencies in the outer islands have perhaps expressed concern about their inability to physically be here because of the unfortunate situation confronting Senator Akaka's operation. For that reason, I think if there is some way that we could work toward the goal of seeing what we could do to accommodate those wishes expressed by the members of our community who live physically in the outer islands, and are just not able to come.

Mr. ABERCROMBIE. It is important to remember that the working groups have been working on all of the islands so we have a considerable amount of testimony on the bill and everyone who wishes to be heard will be heard.

Senator INOUYE. We have advised all of those who have signed up to testify as witnesses that we have set aside a dedicated telephone line through which they can testify orally, and which will be made part of the recorded record of the proceedings. The witnesses have this telephone number. This telephone line has been operational since 6 o'clock this morning and will continue to remain operational until we adjourn Friday.

So with that, the hearings are recessed until 8:30 a.m. tomorrow.

[Whereupon, at 5 p.m., the committees were recessed, to reconvene at 8:30 a.m. on Tuesday, August 29, 2000.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF GOVERNOR BILL ANOATUBBY, CHICKASAW NATION

It is a pleasure, on behalf of the Chickasaw Nation, to provide this written testimony to the Senate Committee on Indian Affairs relating to S. 2899. We hope that our comments will be beneficial to the committee and, ultimately, to the native Hawaiians who are to benefit from S. 2899.

The Chickasaw Nation is in a unique position when it comes to enrollment of citizens. Having undergone the process as one of the Five Civilized Tribes during the Dawes Commission enrollment period [1898 to 1906], we have first-hand experience and offer some preliminary and general comments in light of that experience.

While there may be some similarities between our enrollment circumstances and those of the native people of Hawaii, there are also some major differences. The Chickasaw people had had their own constitutional government for more than 5 decades before the Dawes Commission began the enrollment process of Chickasaw citizens, and a traditional type of Chickasaw government—headed by a king—existed for thousands of years before the ratification of the 1855 Chickasaw Nation constitution. Because of the preexistence of the tribal government prior to the enrollment period, the tribe's government was granted the power and authority to challenge the enrollment by the Dawes Commission of any person the tribal government believed was not entitled to Chickasaw citizenship. In retrospect, it is easy to see that power and authority saved our tribe many hundreds of thousands of dollars because it was able to remove from the rolls devised by the Dawes Commission persons who were not, indeed, Chickasaw.

While we certainly understand that the native Hawaiians currently do not have their own form of recognized government through which challenges to enrollment might be made in official channels, we believe it would certainly be in the best interest of the native Hawaiian people and the United States, to make such provision in S. 2899, beyond what is anticipated and allowed for in section 7 of the bill.

While there is no exact process or procedures required in the bill to definitively ascertain the lineal descendancy of the native Hawaiians to be enrolled, there should, nevertheless, be provisions to allow for an appropriate agency of the native Hawaiian people to issue challenges on behalf of the native Hawaiians. The allowance under section 7 at part (5) for challenges to the roll as published in the Federal Register is effective only for petitions filed by "any member of the public." Allowing any person to file challenges to the enrollment of any person could, conceivably, make it possible for such challenges—and their resolution—to take years.

In our own history, hundreds of people were able to convince the Dawes Commission of their eligibility for enrollment on the Chickasaw rolls; however, due to intervention and challenges by the tribal government, nearly all of those were successfully removed from the rolls when the tribal government itself demonstrated that those individuals were not, in fact, citizens of the Chickasaw Nation.

At section 5 of the measure the attorney general is required to designate an "appropriate official within the Department of Justice" to help the Office of the Special Trustee for Native Hawaiian Affairs in "the. . . protection of the rights of native Ha-

waiians and their political and legal relationship with the United States. . . " That is an obligation and duty the services of which the bill requires to be continued, even after the United States affords formal recognition to the native Hawaiian governing body. Had such a position been-created and empowered in our own history, we are confident that many of the problems experienced in our past and, indeed, even today, could have been avoided. The question in this instance becomes, then, is the Department of justice therefore and thereby empowered to address the issues which could conceivably arise regarding enrollment on behalf of the native Hawaiian people in addition to any and all other challenges which may arise to the rights and political and legal relationships between the native Hawaiian people and the United States? Without adequate clarification, this could also conceivably present problems in resolving conflicts or challenges to the rolls.

We humbly remind the committee that our comments are not intended to be critical of S. 2899, but, rather, to be merely observations which we hope will prove helpful to the committee in its work in this most worthwhile endeavor. We hope that the sharing of our own past experiences will be helpful to this committee and to the native Hawaiian people.

In general, we commend the people of the United States of America, acting through their representatives in Congress, for this valorous attempt at remedying the historic problems visited upon the native Hawaiian peoples. Returning to them the opportunity for self-governance is yet another indication of the growing compassion held for America's indigenous peoples by the government which serves us all.

We appreciate being given the opportunity to provide these comments, and wish the committee every success in its efforts.

PREPARED STATEMENT OF KAWIKA CUTCHER

Mr. Cutcher. Aloha everybody, my name is Kawika Cutcher. I'm from Anahola, Hawaiian Homestead beneficiary.

The issue of our islands has been one of abuse by the overthrow descendants to the illegal overthrow to Federal judges opening office of Hawaiian Affairs to non-Hawaiians. The outlawing of our native tongue by the forces of evil and the State of Hawaii until 1980, the 30,000 Hawaiians who have died on the Homestead list countless others who have had their homes quiet-titled by foreign companies and the loss of Hawaiians Homes inventory which has been quiet-titled away by special interest groups which is a Federal trust. To the denying of our fishing and hunting rights, et cetera.

Public Law 103–150, the Apology Act. As I see it, there is no return of the lands, no repayment of back rents, an apology for what? My family have been in these islands since 120 A.D. My tutu, Christine Mokuaikai Malao, was at Queen Lili'uokalani's funeral when she was in school. My tutu man, Kalei Miller, fought in World War I and is buried in Hanapepe Veterans Cemetery. My mother, Kaui Miller Cutcher, served in the Korean War as a nurse. My father, David Cutcher, Sr., served as a combat engineer. My younger brother, Kalei Cutcher, served in the Navy and is a sheriff in upstate New York.

I served in the U.S. Army, 8th Military Intelligence as a pathfinder connected to the 7th Special Forces Group. My squad leader was an American Indian. His name was Billy Mack from, South Carolina, a full-blooded Cherokee. His homelands were protected by the Federal law and his tribe was sovereign on their homeland by Federal recognition.

The key to my testimony is the word "if'. "If", his homelands were protected by the Federal law and his tribe was sovereign on their homelands by Federal recognition, they had control over their government through tribal council police departments, hospitals, schools, and even casinos. We as Kanaka Maoli's, don't have any control over our lands, ceded lands, harbors, airports, Hawaiian Homelands, crown lands, et cetera. "If", Federal recognition will put our lands in our hands, then I would support it. "If", Federal recognition is to protect our Kupunas from having their ancestral 1.8 million acres of ceded land from being quiet-titled, I would be for it. "If", it is a step to gain self-worth for our children, I would be for it. "If", it helps control the drug problems on our homelands, I would be for it. "If", this bill can change the Hawaiian Homes Act to its original intent by Prince Kuhio to one-thirty-second blood quantum, I would be for it. I would support it. As a Kanaka Maoli, I am saddened by the state of my people's plight. Why? Because, all of the promises from government representatives, all the lies and stealing of our lands by countless foreigners and corporations, all using the word "Aloha", all the way to the bank, while my people suffer from drugs alcohol, cancer, obesity, and most of all, broken hearts. When I look at Hawaii, 1,000 tears of aloha fall from my eyes. These

United States were founded on God's words, "Thou shalt not steal." Part of the Ten Commandments. What has happened to America? What has she become?. Has she become an immoral degenerate or has she become a prostitute? What has happened to the foundation of these United States, that was founded on God's Law, "Thou shalt not steal, thou shalt not covet, thou shalt not take what is not yours?" I don't understand. What has happened to my people over the last 100 years? We have been brainwashed, lied too, stolen from, our lands have been exploited, and our culture has been sold for dollars. Our language had been outlawed until 1980, but my people through all of this have survived. We even have protected the overthrow descendants who overthrew the Queen by laying down our lives in America's wars. Some of us did not come home.

If this, Akaka bill, is the first step to fixing the anger, hurt, tears, blood, the land base, the 1.8 million acres of land, 220,000 acres of homestead, the crown lands, then I will support it.

But, you must remember, we are Kanaka Maoli, not native Hawaiians. We are Hawaii's aboriginal people with a distinct history from our great migrations across the Pacific to our Kumulipo. Our people are a chosen people. We knew the stars, and the planets' peace, and yet, we're warriors. What binds my people together is our "koko" blood. If we have differences of opinion, we are still the same people through the blood. This is a link which makes us, all connected.

Some of my people get angry when they think we are Indians, we are not. There is a common history of lies, stolen lands, genocide, and even, Hawaiians being killed just like the American Indians. We as a people may have many views such as restoring the Kingdom of Hawaii to a nation within a nation, but the committee must always remember, we are Hawaii and we are its aboriginal people. We come in many colors, and many sizes, with many different views, but we all agree on these basic things; stop stealing our lands. Repay what you owe us the ceded lands, the $140 billion in back rent that the Federal Government owes, and the $220 billion that the State of Hawaii owes for illegal use of harbors and airports. Also, stop the amerifornication and colonial fascism on our island homelands by the forces of evil. Stop the quiet-titles, adverse possession, quiet claims and exploitation of our lands,.

"If" this bill can stop these things and help my people on the road to reinstate our Kingdom, then I will support it with all my mana'o and aloha. I am tired of broken promises by government people. I am tired of reading, almost daily, that a kupuna's land has been stolen. I am sick of some non-Hawaiians using the 14th amendment of the U.S. Constitution to justify their ancestral sins. The 14th amendment of the Constitution has to do with freed Negro slaves.

I am sick of some of my own people supporting the people who want to steal every penny of every Hawaiian trust, that has been set aside for our children's children. I ask as a veteran and a Kanaka Maoli to help my people and 1,000 tears means this: A thousand tears. Lonely nights blow across our land. Tutu wahine stands alone across the fence. A tear falls down her eye, it's gone. Her home has been taken through quiet-title. The real estate agent says it never was hers. Three hundred years of growin tsro and countless keiki. Children running, crying, and even dying. Plastic is their love for our 'Aina. In each tear a generation is lost, she can't understand why. What has happened to her home? I see her in my dreams. I cry tutu. She was with the Queen on that terrible day. All the tears falling like rain. Her son with the net in hand loves the land. His heart is in the seas swimming with the 'Aina. His hope is in justice, but from outside the fence. His tears flow blood of a young warrior. His father's white hair tells a tale of hardship in his own land. His heart longs for freedom from oppression, but no one sees.

Tonight, I cry for my son. What will he see from outside the fence? My bones grow weary, but tutu's tears fill my eyes. Hawaii, what have you done to my native son?

Thank you, Mahalo.

Please pass this Bill.

PREPARED STATEMENT OF JUDGE WILLIAM J. FERNANDEZ, [RETIRED]

My name is William J. Fernandez. I am a retired Superior Court Judge. In 1949 I graduated from Kamehameha Schools, an educational institution for children of Hawaiian ancestry. Attending Stanford University I received a bachelors degree and a doctorate at law from Stanford. Presently I am president of a regional association of Kamehameha alumni as well as an officer of the Board of Presidents of the Kamehameha Schools Alumni Association. I testify on behalf of my constituent alumni members and on behalf of the Board of Presidents of the Alumni Association.

Since annexation of Hawaii by the United States in 1898, native Hawaiians have been the unwanted stepchildren of America. When United States marines forcibly

removed the constitutional head of the Hawaiian government on January 16, 1893, Hawaiians were left without an advocate or government to speak for them. In 1898 no one represented and advocated for Hawaiian interests when annexation to the United States occurred.

Without a government or a legal representative fighting for Hawaiian rights, we had no standing at the political bargaining table of annexation. As the lands of the Hawaiian people passed over into the trustee hands of America no mention was made of providing for the natives who occupied the hills and valleys of Hawaii. Overnight the Hawaiian people became squatters on what once were their lands.

These squatters would go through years of turmoil, privation, and loss of dignity as Hawaii moved into the 20th century. It was not until the passage of the Hawaiian Homes Commission Act of 1920 that the homeless state of the Hawaiian people began to be addressed. Yet because Hawaiians lacked education and leadership, there were no advocates for Hawaiians to ensure that the distribution of lands to needy people would be swift and fair.

Fortunately for Hawaiians, some of their alii, titular leaders, had placed their land holdings into trusts. These trusts survived annexation and succeeded in providing elderly housing, hospitalization, and education for a small number of native Hawaiians.

When statehood occurred, in 1959 the United States returned 1.4 million acres of trust lands to the State of Hawaii for five purposes. One purpose is for "the betterment of native Hawaiian conditions." Yet again when this return to the State of Hawaiian lands occurred there were no advocates for Hawaiians to speak for them, protect their interest, and set up a mechanism where Hawaiians could administer the funds to be disbursed from these 1.4 million acres.

Yes, the people of Hawaii in their Constitutional Convention of 1978 set up the Office of Hawaiian Affairs, OHA, to administer trust funds for Hawaiians. Yet OHA is a State agency. Its trustees are elected during State elections. There were no advocates, no government of the Hawaiian people to speak to the error of its creation. It took 22 years and a series of court battles to show the basic fault underlying OHA. The State of Hawaii cannot have race based voting in State held elections.

Rice v. *Cayetano* has struck down race as a limitation on voting rights. It has posited these questions for all the people of Hawaii. Has the Constitution of the United States permanently eliminated Hawaiians as native Americans? Are we just an ethnic minority without "special privileges"? If the answers are yes then all State and Federal programs and all alii trustees which benefit native Hawaiians are in jeopardy.

I am a loyal American. I believe that this is the finest and best country on the face of the Earth. Because this Nation is inherently fair, I know that you of the Congress of the United States will give Hawaiians recognition as native Americans. Presently native Americans are defined as American Indians, Eskimos, and Aleuts. Obviously, Hawaiians are indigenous peoples just like native Americans in the other 49 States and as such should be so designated. We must have this recognition for Hawaiians to advocate for ourselves and become self-governing people.

The injustice of the overthrow must be remedied through Congressional action to formally recognize that a special trust relationship between the United States and Hawaiians exists. The Solicitor General of the United States agrees that such a relationship exists, but ultimately it is Congress which must make it law.

Hawaiians need the umbrella of Federal law to shield us, like other native Americans, from the Constitutional proscriptions against unreasonable State actions inherent in the 14th and 15th amendments of the U.S. Constitution. Recognition of Hawaiians as native Americans and acknowledgment of a trust relationship by the United States to native Hawaiians will be an important legal start to righting the wrongs of the past. It will give Hawaiians the necessary standing to move beyond the status of an ethnic minority into the status of a native people entitled to self-government within the lands of the United States.

We who are graduates of the Kamehameha Schools received an outstanding education from the alii trust set up by Bernice Pauahi Bishop for native Hawaiian children. We know that the proposed legislation sponsored by Senators Akaka and Inouye is vital to ensuring that Kamehameha Schools continue to serve our people. Kamehameha alumni across the Nation, from Washington DC to Hawaii have passed this resolution:

Whereas, in view of the United States Supreme Court's decision in *Rice* v. *Cayetano,* the status of native Hawaiians as a recognizable group of people with special preferences similarly afforded to other indigenous peoples in the United States is in serious jeopardy; and

Whereas, without this recognition the policy of the Kamehameha Schools to give preference to applicants of Hawaiian ancestry and therefore perpetuate the legacy of Princess Bernice Pauahi Bishop could be discontinued, and

Whereas, as a people, those of Hawaiian ancestry may in fact not be legally entitled to any special treatment or Federal benefits without the protection of this proposed legislation;

Now therefore, be it resolved that the Kamehameha Schools Alumni Association through its regional boards of directors and its Board of Presidents, committed to protecting the legacy of the Princess, to furthering the vision and mission of Kamehameha Schools, and to supporting programs which benefit the health, economic and educational welfare of the Hawaiian people;

Do hereby support the efforts of Senators Akaka and Inouye to pass legislation, which will provide a legal basis for native Hawaiians to have the recognition, status, and consideration, afforded other indigenous peoples of the United States.

Be it further resolved that this resolution be submitted to Senators Akaka and Inouye by a representative of the Board of Presidents prior to or at the hearings on their bill scheduled for August of this year.

The alumni of Kamehameha Schools respectfully asks Congress to embrace and expeditiously enact the Akaka/Inouye legislation. We ask for Federal recognition of native Hawaiians and a mechanism to establish a trust relationship between our peoples. We ask that Congress give us the means to achieve quasi-sovereignty for Hawaiians.

PREPARED STATEMENT OF HENRY E. SMITH JR.

My name is Henry E. Smith Jr., I am a Kanaka Hawaii Maoli, born and raised in the Hawaiian Island since April 27, 1936. I waive none of my Kanaka Hawaii Maoli Rights, my Inherent Rights and also my Vested Rights to the Lands, Air, Water, Minerals, Fishing, and our 200 mile zone limit around the Hawaiian Archipelago.

I believe that our Hawaiian nation is still in existence, but held in suspension temporarily. I'm for total Independence, restoration of our Hawaiian nation.

I believe that Senator Akaka's bill will take away our Kanaka Culture, Rights, Language, Religion, Fishing, Hunting, Lands, Water, Air, and et cetera. In Public Law 103–150, The Apology Bill, it states that " Whereas, the Indigenous Hawaiian people never directly relinquished their claims to their Inherent Sovereignty as a people or over their national lands to the United States, either through their Monarchy, or through a Plebiscite or referendum." Guess what? The Fifth Circuit Court on Kauai denied my claim to my inherent right to my national land. Do I believe in the U.S. Justice system, no and a thousand times no.

I honestly believe that the United States Of America is out to extinguish the Kanaka Hawaii Maoli. The United States of America has stolen a nation, has stolen their language, has stolen their land, has stolen their water, has stolen their air, has stolen their mineral, has stolen their culture and has stolen et cetera.

I believe that it is time for all the Kanaka Hawaii Maoli to stand up and reject the Akaka bill. This bill is to turn away a proud Kanaka Hawaii Maoli nation and reduce them to nothing, steal their nation.

The United States of America does not practice what they preach, justice, liberty and freedom to all. They have broken the most sacred thing in life that everyone holds dear to their heart and its "Thou Shalt Not Steal", it hurts when a big country like the United States of America has to stoop that low.

I'll stop writing for now because I know I can write a book but financially I can not afford this 20 copies. I'm doing it because I want my children and grandchildren to know that I care for my nation, the Kanaka Hawaii Maoli.

of
Robert T. Anderson,
Counselor to the Secretary
Department of the Interior
Before the
House Resource Committee
and the
United States Senate
Committee on Indian Affairs
Joint Field Hearing on S. 2899 & H.R. 4904,
to express the policy of the United States regarding the United
States' Relationship with Native Hawaiians

August 28, 2000

Introduction

Good morning, Mr. Chairman and members of both Committees. I am Robert Anderson, Counselor to the Secretary of the Department of the Interior. It is my pleasure to be here today to present the Department's views on S. 2899 and H.R. 4904.

Mr. Chairman, the Administration supports the purposes of S. 2899 and H.R. 4904 that are before both Committees. The Department believes that the Bills appropriately affirm and acknowledge the political relationship between the United States and Native Hawaiians. Our recommended change is set out below, along with our general comments.

Background

The Native Hawaiian people are the aboriginal, indigenous, native people of Hawaii. They have lived in Hawai'i for over 1,000 years, and their culture was based on a well developed system of agriculture and aquaculture. Native Hawaiians made remarkable artistic, cultural, and scientific advances, including amazing feats of navigation, prior to the first contact with Europeans in 1778. In 1810, King Kamehameha I established the unified Kingdom of Hawai'i to govern the Native Hawaiian people. Over the next 60 years, the United States entered into several treaties of peace, friendship and commerce with the Kingdom of Hawaii, recognizing its status as an independent sovereign.

During the 1880s, western influence over the Kingdom of Hawai'i increased, and in 1893, as Queen Lili'uokalani sought to restore the full authority of the Native Hawaiian monarchy, the American and European plantation owners acting in concert with the U.S. Minister and military forces overthrew the Kingdom. The Provisional Republic of Hawaii, formed by the plantation owners, then seized the Crown and public lands of the Kingdom of Hawaii, including one-third of Hawai'i that was impressed with a trust for the Native Hawaiian common people. Although President Cleveland initially opposed the overthrow, President McKinley supported the call of the Republic of Hawai'i for annexation. Congress annexed Hawai'i in 1898, without the consent of the Native Hawaiian people. As a result of the overthrow, laws suppressing Hawaiian culture and language, and displacement from the land, the Native Hawaiian people suffered mortality, disease, economic deprivation, social distress, and population decline.

The Territory of Hawai'i recognized that the conditions of the Native Hawaiian people continued to deteriorate, and members of the territorial legislature proposed that Congress enact a measure to rehabilitate the Native Hawaiian people by returning them to the land and promoting agriculture under Federal protections. In congressional hearings, the Secretary of the Interior acknowledged that the Native Hawaiian people were suffering a decline and that the Federal Government had a special responsibility to promote their welfare. In 1920, relying in part on the precedent of the General Allotment Act, which provided individual lands for American Indians under Federal protections, Congress enacted the Hawaiian Homes Commission Act to rehabilitate the Native Hawaiian people by setting aside for Native Hawaiian settlement and agriculture use 200,000 acres of the "ceded" lands, i.e., the former Crown and public lands of the Kingdom of Hawaii. Later, in the State Admissions Act, Congress set aside the balance of the ceded lands, not reserved for Federal purposes, in a public trust to be held and administered by the State for five purposes, including the betterment of the Native Hawaiians.

The Hawaiian Homeland settlements throughout the Hawaiian Islands assisted the Native Hawaiian people in maintaining their historic ties to the land and distinctly native settlements. In addition, through Native Hawaiian social and political institutions, such as the Native Hawaiian civic clubs, the Kamehameha schools, and the

Lili'uokalani Hawaiian Children's Foundation, the Native Hawaiian community has maintained its distinct character as an aboriginal, native people. In recent years, overcoming a legacy of cultural suppression, Native Hawaiians have revitalized their language, culture, traditions, and aspiration for self-determination through Native Hawaiian language immersion programs, cultural education programs, restoration of traditional agriculture and aquaculture, creation of new social institutions and quasi-governmental service providers and the Native Hawaiian sovereignty movement, among other things. And, Native Hawaiians have made clear their desire for self-determination, i.e., increased Native Hawaiian control of Native Hawaiian affairs, resources, and lands.

Nevertheless, the Native Hawaiian people, as a native community, continue to suffer from economic deprivation, low educational attainment, poor health status, substandard housing, and social dislocation. In response, since the early 1970s, Congress has enacted statutes that recognize these problems among Native Hawaiians and establish programs to address them. For example, the Native Hawaiian Education Act refers to studies that show that Native Hawaiian students face educational risk factors start before birth, stemming from substandard prenatal care and high rates of teen births, and continue to score below national averages at all grade levels. 20 U.S.C. sec. 7902. This Act provides funding to Native Hawaiian schools and education councils to promote special education programs for Native Hawaiian students. The Native Hawaiian Health Care Act finds that "the unmet health needs of the Native Hawaiian people are severe and the health status of Native Hawaiians continues to be far below that of the general population of the United States." 42 U.S.C. sec. 11701. This Act provides funding to Native Hawaiian health care providers to provide preventative health care to the Native Hawaiian community. The Native Hawaiian Housing Bill, S. 225, finds that Native Hawaiians face the most severe housing shortage of any group in the Nation, and if enacted, would provide low income housing to Native Hawaiians on Hawaiian Home lands.

The Reconciliation Process under Public Law 103-150

Against this background in 1993, Congress enacted Public Law 103-150, the Native Hawaiian Apology Resolution, which acknowledged the role of United States' officers in the overthrow of the Kingdom of Hawai'i and called on the Executive Branch to undertake special efforts to promote reconciliation between the United States and the Native Hawaiian people. The passage of the Apology Resolution was the first step in this reconciliation process.

In March of 1999, Senator Daniel K. Akaka asked Secretary of the Interior Bruce Babbitt and Attorney General Janet Reno to designate officials to represent their respective Departments in efforts of reconciliation between the Federal Government and Native Hawaiians. Secretary Babbitt designated John Berry, Assistant Secretary, Policy Management and Budget, for the Department of the Interior, and Attorney General Reno designated Mark Van Norman, Director, Office of Tribal Justice, for the Department of Justice, to take the next steps in the reconciliation process.

Informal meetings were held on O'ahu in August 1999, and public consultations with Mr. Berry and Mr. Van Norman commenced in December 1999, when meetings with the Native Hawaiian community were held on Kaua'i, Maui, Moloka'i, and Lana'i, and in Hilo, Waimea and Kona on Hawai'i. These public consultations ended in two days of formal hearings held on O'ahu. Over forty hours of public testimony was received. During their visit to Hawai'i, Mr. Berry and Mr. Van Norman also visited Native Hawaiian homestead communities, taro farms, Hawaiian language immersion schools, and Native Hawaiian fish ponds in the process of being restored, and observed numerous programs designed to benefit Native Hawaiians. Throughout the meetings, Native Hawaiians repeatedly expressed the desire for increased self-determination concerning Native Hawaiian affairs, resources, and lands. As a result of the process, the Departments recently issued a report outlining recommendations with respect to the continuation of the reconciliation process, including federal recognition, self-determination, and self-governance, to help the Native Hawaiians provide a better future for their members and community. The Report will be finalized after the public has had an opportunity to comment.

Native Hawaiians also have called upon the United States to assist them in improving economic opportunities, educational attainment, health status, and housing. Specifically, the Native Hawaiian people requested that the Administration support and Congress enact S. 225, the Native Hawaiian Housing Act and reauthorize the Native Hawaiian Education Act and the Native Hawaiian Health Care Act.

Within the framework of Federal law, there are established precedents to accommodate the Native Hawaiian people's desire for increased self-determination. American Indian tribes and Alaska Native villages exercise self-determination over native institutions, such as schools and health care institutions; over native affairs, such as language and cultural preservation; and over native lands and resources. They do so through recognized tribal governments and federally chartered native corporations in the context of the Federal policy of recognizing the unique government-to-government and special relationships that exist between the United States and its native peoples. American Indian and Alaska Native peoples value self-determination as an avenue for addressing their

communities, economic, educational, health, and social needs. Indeed, American Indian and Alaska Native peoples view the Federal Indian self-determination policy as recognizing their legitimate aspiration to transmit their distinct native values, traditions, beliefs, and aboriginal lands to their future generations.

In furtherance of reconciliation process, the Native Hawaiian people seek to re-organize a native governing body. A Native Hawaiian governing body, organized against the background of established precedent, would serve as a representative voice for the Native Hawaiian people, focus community goals, provide governmental services to improve community welfare, and recognize the legitimate aspiration of the Native Hawaiian people to transmit their values, traditions, and beliefs to their future generations.

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties and under Federal common law, our Nation has guaranteed the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.

Traditionally, most aspects of the trust responsibility were delegated by Congress to the Department of the Interior and the Department of Justice, the latter of which has litigated many court cases on behalf of Indian tribes and individuals. As Federal programs for Indians have proliferated in modern times, many other Federal agencies have become involved in Indian affairs and they, too, must comply with the duties imposed by the trust relationship.

In the Department of the Interior, the Bureau of Indian Affairs (BIA) is the principal bureau within the Federal Government responsible for the administration of Federal programs for Federally recognized Indian tribes, and for promoting Indian self-determination. In addition, the BIA, like all Federal agencies, has a trust responsibility emanating from treaties, statutes, judicial decisions and agreements with tribal governments. The mission of the BIA is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and properly manage the trust assets of Indian tribes and Alaska Natives. The BIA provides resources and delivers services to support tribal government operations similar to those provided by state, city, and municipal governments. These services include, but are not limited to: law enforcement, social services, education, housing improvements, loan opportunities for Indian businesses, and leasing of land.

The BIA currently provides Federal services to approximately 1.2 million American Indians and Alaska Natives who are members of more than 550 Federally recognized Indian tribes in the 48 contiguous States and in Alaska. The BIA also has a trust responsibility for more than 43 million acres of tribally-owned land and more than 10 million acres of individually-owned land. The BIA is headed by the Assistant Secretary - Indian Affairs, who is responsible for BIA policy.

Trust Responsibility

The courts consistently have upheld exercises of congressional power over Indian affairs, as specifically provided under the Indian Commerce Clause. U.S. Constitution, Article I, Section 8, clause 3. Pursuant to that authority, the Congress has enacted many statutes for the benefit of Native Hawaiians.

The concept of the Federal Indian trust responsibility was evident in the Trade and Intercourse Acts and other late 18th and early 19th-century Federal laws protecting Indian land transactions and regulating trade with the tribes. The doctrine was first announced in Chief Justice Marshall's opinion in Cherokee Nation v. Georgia (1831). The Cherokee Nation had filed suit in the United States Supreme Court to enjoin the state of Georgia from enforcing state laws on lands guaranteed to the tribe by treaties. The Court concluded that the tribe was neither a state nor a foreign nation under the Constitution and therefore was not entitled to bring the suit initially in the Supreme Court. Chief Justice Marshall, however, concluded that Indian tribes "may, more correctly, perhaps, be denominated domestic dependent nations" and that "[t]heir relation to the United States resembles that of a ward to his guardian." The courts consistently have upheld exercises of congressional power over Indian affairs, often relying on the trust relationship.

The Supreme Court's subsequent decision in Worcester v. Georgia (1832) reaffirmed the status of Indian tribes as self-governing entities. Chief Justice Marshall construed the treaties and the Indian Trade and Intercourse Acts as protecting the tribes' status as distinct political communities possessing self-government authority within their boundaries. Thus, Georgia state law could not be applied on Cherokee lands because, as a matter of Federal law, the United States had recognized tribal self-governing powers by entering into a treaty with the Cherokees. In spite of

its governmental status, however, the Cherokee Nation was placed expressly by the treaties "under the protection of the United States."

Under the special relationship, Indian tribes receive some benefits not available to other citizens. For example, in the 1974 Morton v. Mancari decision, the Supreme Court upheld a BIA Indian hiring preference because, like special health and education benefits flowing from the trust relationship, the preference is not based on race; rather, Federal programs dealing with Indians derive from the government-to government relationship between the United States and Indian tribes. The same reasoning applies to off-reservation Indian hunting and fishing rights; they trace to treaties with specific tribal governments.

Federal Recognition

The rights, duties and obligations that make up the trust relationship as exercised through the Secretary of the Interior exist only between the United States and those Indian tribes "recognized" by the United States. Once Federal recognition is found to exist, it results in the establishment of a government-to-government relationship with the tribe.

An Indian group is a federally recognized tribe if: (1) Congress or the executive created a reservation for the group either by treaty, by statutorily expressed agreement, or by executive order or other valid administrative action; and (2) the United States has some continuing political relationship with the group, such as providing services through the BIA. Accordingly, Indian groups situated on Federally maintained reservations are considered tribes under virtually every statute that refers to Indian tribes. In addition, tribes have been recognized by the United States based on the existence of treaty relations or other continuous dealings with the Federal Government, despite the lack of a reservation.

In 1978, in order to resolve doubts about the status of those tribes lacking Federal recognition, the Department of the Interior issued regulations entitled "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," now codified at 25 C.F.R. 83. The regulations "establish a departmental procedure and policy for acknowledging that certain American Indian tribes exist."

Such acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits from the Federal Government available to Indian tribes. Such acknowledgment also means that the tribe is entitled to the immunities and privileges available to other Federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes. Acknowledgment subjects the Indian tribe to the same authority of Congress and the United States to which other Federally acknowledged tribes are subjected.[2] 25 CFR 83.2.

Under the procedures, groups not recognized as tribes by the Federal Government may apply for Federal acknowledgment. Tribes, bands, pueblos or communities already acknowledged as such and receiving services from the Bureau of Indian Affairs were not required to seek acknowledgment anew. 25 CFR 83.3 (a), (b). To assist groups in determining whether they were required to apply, the procedures provided for the publication within 90 days of a list of "all Indian tribes which are recognized and receiving services from the Bureau of Indian Affairs." 25 CFR 83.6(b). This list is to be updated annually. Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Department Comments on S. 2899 and H.R. 4904

The Department has recommended a reconciliation process that would result in an official confirmation of a political, government-to-government relationship between Native Hawaiians and the Federal Government, similar to the relationship enjoyed by other native people in the United States. The Senate and House Bills would enable the Native Hawaiians to establish a representative governing body through a process that has precedent in the federal recognition of Indian tribes.

The Department has recommended the establishment of an office under the Assistant Secretary of Indian Affairs to address Native Hawaiian issues. The Bills, however, would establish a new Interior Office of Special Trustee for Native Hawaiian Affairs.

The Department has recommended the creation of a Native Hawaiian Advisory Commission to consult with Interior bureaus that manage land in Hawaii affecting Native Hawaiians. The Bills would also establish a Native Hawaiian Interagency Task Force for the government-wide coordination of federal policies affecting Native Hawaiians, including consultations with the Native Hawaiian governing body.

We have carefully reviewed the definition of "Native Hawaiians" in the Bills and consulted with the Department of Justice. We concur in the recommendations made by the Department of Justice with respect to that definition.

Conclusion

The Department of the Interior generally supports the legislation and is committed to working with the Native Hawaiian people and the Congress, upon enactment of this legislation, to address successfully the steps to Federal recognition, self-governance, and self-determination of the Native Hawaiian people. There are a number of prospective matters that the Federal Government may have to work out with the Native Hawaiian governing body and the State of Hawai'i, through future legislation. These challenges may include:

* potential land claims that Native Hawaiians may assert against the United States, the State of Hawai'i, or private landowners;

* the nature and extent of the rights, obligations and benefits in extending Federal recognition to Native Hawaiians under the Native American Indian statutes;

* the Federal Government's trust and fiduciary responsibilities for any federal lands that may be transferred to the Native Hawaiian community; and

* the relative responsibilities of Native Hawaiian community and the State of Hawai'i and its local governments in providing schools, law enforcement, and other public services.

With the permission of the Committees, the Department intends to supplement this testimony with additional views on S. 2899 and H.R. 4904 before the record is closed. This concludes my prepared statement. I will be happy to answer any questions the Committee members may have.

Testimony of Jacqueline Agtuca, Acting Director,
Office of Tribal Justice, U.S. Department of Justice
On S. 2899 and H.R. 4904 – Bills to Express the Policy of the United States
Regarding its Relationship with Native Hawaiians

Vice Chairman Inouye, Senator Akaka, and Representatives Abercrombie and Faleomavaga, my name is Jacqueline Agtuca. I am the Acting Director of the Office of Tribal Justice in the United States Department of Justice. Thank you for the opportunity to present views on S. 2899 and H.R. 4904.

At the outset, I should explain that the Office of Tribal Justice coordinates Department policy on its dealings with American Indians, Alaska Natives, and Native Hawaiians. Department of Justice policy recognizes the principle of government-to-government relations in its work with tribal governments. See Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes, at 1 (June 1, 1995); http://www.usdoj.gov/otj/sovtrb.htm. Pursuant to this policy, the Office of Tribal Justice has been integrally involved in the Reconciliation Process between the United States and the Native Hawaiian people pursuant to Public Law 103-150 (S.J. Res. 19), 107 Stat. 1510 (1993), the Native Hawaiian Apology Resolution. S. 2899 and H.R. 4904 would provide the Native Hawaiian people with an opportunity to reorganize a representative, self-governing body to promote Native Hawaiian interests.

I will begin with a brief background of the relevant history of United States-Native Hawaiian relations and a discussion of the Reconciliation Process under Public Law 103-150 before turning to some of our specific comments on the identical Senate and House bills.

I. Background of Native Hawaiian - United States Relations

The Native Hawaiian people are the indigenous people of Hawaii. Historically, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistence social system based on communal land tenure. The Native Hawaiians have a highly developed and distinctive language, culture, and religion. The first encounter between Native Hawaiians and Europeans occurred when Captain James Cook sailed into Hawaiian waters in 1778. At that time, even though indigenous Hawaiians were all one people, the eight islands were governed by four independent Hawaiian chiefdoms.

In 1810, King Kamehameha I united the islands into the Kingdom of Hawaii. Between 1826 and 1893, the United States recognized the Kingdom as a sovereign nation and entered into several treaties with it. During that same period, Americans gained control of most of Hawaii's commerce and began to dominate the Kingdom's political affairs. Resulting social and economic changes had a "devastating" effect on the Native Hawaiian population and on their "health and well-being." Public Law 103-150, 107 Stat. 1510, 1512.

In 1893, Queen Lili'uokalani sought to re-establish Native Hawaiian control over the Kingdom's governmental affairs through constitutional reform. Fearing a loss of power, a group representing American commercial interests overthrew the Kingdom with the unauthorized aid of the United States Minister to Hawaii, who caused an armed U.S. naval force to invade Hawaii. Under this threat of military force, Queen Lili'oukalani abdicated her throne. A provisional government was established, which immediately sought Hawaii's annexation by the United States. President Cleveland refused to recognize the provisional government and called for restoration of the monarchy. However, Congress later enacted a joint resolution annexing Hawaii, which President McKinley signed into law in 1898. As part of annexation, the provisional government, without compensation to the Native Hawaiian people, ceded 1.8 million acres of the Kingdom's former crown, government, and public lands to the United States (the "ceded lands").

After annexation, the conditions of Native Hawaiians continued to deteriorate, and in 1920, territorial representatives sought assistance for the Native Hawaiian people from Congress. Explaining that the Native Hawaiian people had been "frozen out of their lands and driven into the cities," and that the "Hawaiian people are dying," the representatives recommended allotting land to the Native Hawaiians so that they could reestablish their traditional agricultural way of life. H.R. Rep. 839, 66th Cong., 2d Sess. 4 (1920). Recognizing the unique relationship between the United States and the Native Hawaiian people, the Secretary of the Interior joined in the recommendation, stating that Native Hawaiians are "our wards . . . for whom in a sense we are trustees," that they were "falling off rapidly in numbers," and that "many of them are in poverty." Id. Additionally, Congress found constitutional precedent for the HHCA in part in previous enactments that allotted individual lands to American Indians. The recommendations led to the enactment of the Hawaiian Homes Commission Act ("HHCA"), Pub. L. No. 67-34, 42 Stat. 108 (July 9, 1921), which designated 200,000 acres of lands as homelands for "Native Hawaiians" of ½ blood or more.

In 1959, Hawaii was admitted as a State. In the Hawaii Admissions Act, Pub. L. No. 86-3, 73 Stat. 4 (1959), Congress required the new State of Hawaii to adopt the HHCA as part of its constitution and transferred federal authority over administration of the HHCA lands to the State. Congress also placed an additional 1.2 million acres of the ceded lands into a trust to be managed by the State for five specified purposes, including "the betterment of the conditions of native Hawaiians." Id. § 5(f), 73 Stat. at 6.

The admission of Hawaii as a State did not alter the status of Native Hawaiians as an indigenous people, and thus, did not alter the political relationship between the United States and the Native Hawaiian people. After passage of the Hawaii Admission Act, Congress continued to recognize its special responsibility for the welfare of Native Hawaiians. Congress has established programs for the benefit of Native Hawaiians in the areas of health care, education, employment, and loans. Congress has also enacted statutes to preserve Native Hawaiian culture, language, and historical sites. Native Hawaiians have been classified as Native Americans in a number of federal statutes. These laws reflect Congress's view that its "authority . . . under the

United States Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the United States includes the authority to legislate in matters affecting the native peoples of . . . Hawaii." 42 U.S.C. § 11701(17). This acknowledgment of a distinct political relationship between the United States and the Native Hawaiians arose out of these historical events I have just described.

In 1980, Congress authorized a Native Hawaiians Study Commission to assess the cultural needs and concerns of Native Hawaiians (Public Law 96-565, Title III). The Commission, comprised of three Hawaiian residents, six federal officials, and support staff, conducted public meetings and other fact-finding activities throughout Hawaii during January - June 1982. The Commission's final, two-volume report was submitted to Congress on June 23, 1983. The social and economic conditions of the Native Hawaiian population has not improved significantly since this 1983 study. Their employment, income, education, and health levels have remained lower than other ethnic groups in Hawaii. The Commission recommended coordinated actions by the federal, state, and local governments and private organizations to address specific needs of Native Hawaiians.

The Senate and House bills that are being considered today would begin this process of restoring self-governance to Native Hawaiians so they may better address their social, economic and cultural needs.

II. The Reconciliation Process under Public Law 103-150

In 1993, Congress enacted a Joint Resolution to acknowledge the 100th anniversary of the overthrow of the Kingdom of Hawaii and to apologize to the Native Hawaiian people for the role of the United States in that overthrow. In the Joint Resolution, Congress acknowledged that the overthrow of the Kingdom "resulted in the suppression of the inherent sovereignty of the Native Hawaiian people," that "the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States," and that "the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions." Pub. 103-150 (S.J. Res. 19), 107 Stat. at 1512, 1513 (1993). The Joint Resolution calls upon the President to promote further reconciliation between the United States and the Native Hawaiian people.

In March 1999, Senator Akaka wrote to the Attorney General, requesting that an office be designated within the Department of Justice to work in cooperation with the Department of the Interior to promote reconciliation between the United States and the Native Hawaiian people. The Attorney General designated the Office of Tribal Justice to work with the Department of the Interior on the Reconciliation Process. In December 1999, the Interior Department Assistant Secretary for Policy, Management and Budget and the Director of the Office of Tribal Justice visited Native Hawaiian sites and held a series of meetings with the Native Hawaiian people to promote reconciliation.

The site visits demonstrated to the Interior-Justice delegation the continuing, distinctly native character and culture of the Native Hawaiian people. The delegation visited Aha Punana Leo, a Native Hawaiian language immersion school on the Island of Hawaii. They were greeted by Native Hawaiian students with traditional Native Hawaiian songs, and they toured the campus grounds, which included areas planted with Taro, the traditional Native Hawaiian staple, and a fish hatchery, reflecting traditional aquaculture. Students had also planted native trees and plants on the campus to establish a conservation area. On the Island of Kauai, the delegation met with Native Hawaiian parents and students at Ni'ihau, a school run by Native Hawaiian teachers from Ni'ihau and Kauai. The Ni'ihau parents explained that their children learned Hawaiian as a first language in the home, so the focus at the school was on teaching the students to speak, read, and write English to ensure that the children are able to interact with non-Natives when they travel to neighboring islands. On the Island of Molokai, the delegation visited a Native Hawaiian group that is restoring a fish pond that is hundreds of years old for subsistence use. On Molokai, the delegation met with a Native Hawaiian kindergarten class, where all of the students are fluent in both Hawaiian and English, and visited with Native Hawaiian kupuna (elders), who explained the importance of being raised in a Hawaiian Homestead community in terms of language and cultural preservation. The delegation also met with and visited a number of Native Hawaiian organizations, including: the Alu Like, the Native Hawaiian Education advocacy organization; members of Native Hawaiian organizations advocating for self-governance; a Native Hawaiian Health Care Center; the Kamehameha schools; Hawaiian Home Land communities and land areas on Kauai, Oahu, and Maui; and several other distinctly Native Hawaiian communities. In addition, the delegation held public meetings and heard statements from several hundred Native Hawaiians.

Throughout these delegation site visits and public meetings, two things were made clear. First, the Native Hawaiians are a distinctly native community with a vibrant culture, traditions, and language and active social and political organizations. We learned from Native Hawaiians that Hawaiian Home Land settlements helped to maintain Hawaiian language and culture, which was particularly important from the 1920s through the 1960s when the use of the Native Hawaiian language and the practice of Native Hawaiian culture were often discouraged by state institutions. We also learned that since the 1960s, a number of Native Hawaiian advocacy groups have actively promoted Hawaiian language and culture and these efforts have gone hand-in-hand with efforts to enhance Native Hawaiian self-governance. To foster these efforts, the Native Hawaiian people maintain both social and quasi-governmental institutions, such as the Native Hawaiian Civic Clubs, Alu Like – the Native Hawaiian education organization, Papa Ola Lokahi – the Native Hawaiian health care organization, Native Hawaiian schools, and Native Hawaiian traditional justice programs, among others.

Second, the delegation heard the clear call of the Native Hawaiian people for self-governance. A majority of Native Hawaiians, from whom the delegation heard, support

increased self-governance over their lands, resources, and affairs.[1] Some of the critical subjects that the Native Hawaiian people identified are increased control of Native Hawaiian lands and resources, education programs, health care delivery, Native Hawaiian housing, and an increased ability to engage the Federal Government in an ongoing dialogue concerning Native Hawaiian issues.

III. Comments on S. 2899 and H.R. 4904

The overthrow of the Kingdom of Hawaii frustrated the right of Native Hawaiians to control their own affairs. While Congress has enacted a number of measures to promote the welfare of the Native Hawaiian people, and Native Hawaiians have themselves worked to maintain their own distinct community, culture, language, and social and political institutions, they have not been afforded a clear opportunity to control their own affairs since 1893. These bills would enable the Native Hawaiians in reorganizing their own representative governing body, which will promote control over their own affairs.

A. Goals of this Legislation

It is evident from the documentation, statements, and views received during the Reconciliation Process undertaken by the Interior-Justice delegation that the Native Hawaiian people continue to maintain a distinct community and certain governmental structures, and they desire to increase their control over their own affairs. For generations, the United States has recognized the unique relationship that exists between the United States and the Native Hawaiians, and has promoted the welfare of Native Hawaiians as an indigenous people within our Nation through legislation, administrative action and policy statements. The proposed legislation, by clarifying the political status of Native Hawaiians, would extend to Native Hawaiians the right of self-governance over their cultural resources and internal affairs.

The proposed process of reorganizing a Native Hawaiian governing body has precedent in Federal legislation promoting self-governance for American Indian and Alaska Native peoples. The government-to-government relationship that exists between the United States and American Indian and Alaska Native communities is firmly established in federal law and policy. From its earliest days, the United States recognized the sovereign status of Indian tribes. Indian tribes were independent, self-governing societies long before their contact with European nations. See

1. While most Native Hawaiians appear to support increased Native Hawaiian control over native lands, resources, and affairs within the framework of Federal law, some members of the Native Hawaiian community have called for restoration of the Kingdom of Hawaii or another form of independence from the United States. The Interior-Justice delegation explained that its mission was to promote reconciliation within the framework of Federal law, and the Reconciliation Process does not have any bearing or implication concerning international law matters.

National Farmers Union Ins. Co. v. Crow Tribe of Indians, 471 U.S. 845, 851 (1985); F. Cohen, Handbook of Federal Indian Law, 229 (Strickland ed. 1982). The retention of inherent sovereignty forms the basis for the exercise of tribal power. Today American Indian tribes and Alaska Native villages and corporations control many programs affecting their communities, including, for example, programs affecting their lands and natural resources, schools and colleges, health, housing, water, sewer, and sanitation services, public safety, and transportation infrastructure on native lands. In addition, acknowledged governmental leaders facilitate the government-to-government relationship, which enables tribal governments to advocate effectively for their community interests.

The proposed bills respond to the call of the Native Hawaiian people for increased self-governance within the framework of domestic Federal law. It recognizes that Native Hawaiians were a self-governing people prior to contact with the European nations, and that the clarification of their political status vis-a-vis the United States is a legitimate exercise of Congress' Indian affairs power. The reorganization of a Native Hawaiian governing body that the bill affords the Native Hawaiian people to constitute could assist the Native Hawaiians to better address their community needs and goals in the context of federal law, and could facilitate the government-to-government relationship between the Federal Government and the Native Hawaiian community. Enhancing the government-to-government relationship between the Native Hawaiians and the United States could ensure that the Native Hawaiian people have greater control over activities affecting their rights and resources. See Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments (April 29, 1994).

B. Findings

The bills' legislative findings establish Congress' intent to exercise authority pursuant to its Indian affairs power. Section 1(1) states that "the Constitution vests Congress with the authority to address the conditions of the indigenous, native peoples of the United States." Subsections (2) and (3) find that the Native Hawaiian people are an aboriginal, indigenous, native people with a special trust relationship to the United States and that Congress has legislated on behalf of the Native Hawaiian people as such. The legislative findings concerning the Hawaiian Homes Commission Act are important because they reflect an early congressional effort to promote the welfare of the Native Hawaiian people by fostering the continuation of traditional Native Hawaiian agricultural endeavors on aboriginal lands under the protection of Federal law. The HHCA embodies a congressional determination that the Native Hawaiians, as defined in that Act, are an indigenous, aboriginal people under the protection of the United States. The legislative findings also reflect the fact that the Native Hawaiian people today maintain a continuing, distinctly Native Hawaiian culture, language, social and political institutions, and community. These policy declarations make clear that Congress intends to reaffirm the right of Native Hawaiians to self-governance, within the framework of Federal law, and intends to continue to promote reconciliation between the United States and the Native Hawaiian people.

C. Definition of Native Hawaiian

In modern Federal legislation dealing with American Indians and Alaska Natives, Congress commonly relies on a tribe's determination of its own membership. However, because the Native Hawaiian governing body has not yet been reorganized, an interim Federal law definition of "Native Hawaiian" is necessary for the operation of the legislation.

We have several comments on the definition of "Native Hawaiian" set forth in section 2(6), and section 7. First, the Department finds it important that the definition includes only those Native Hawaiians who voluntarily choose to affiliate with the Native Hawaiian governing body. Section 7(a)(1)(A) does exactly this by establishing a roll that includes the names of "the adult members of the Native Hawaiian community who wish to become members of a Native Hawaiian governing body."

Second, the interim definition of Native Hawaiian set forth in section 7(a) ties membership to "lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago."

The Supreme Court's decision in Rice v. Cayetano, 120 S. Ct. 1044 (2000) left open the question "whether Congress may treat the native Hawaiians as it does the Indian tribes." Rice, 120 S. Ct. at 1057. Accordingly, in invoking its established constitutional authority with respect to Indian Tribes in the present context – namely, by providing Native Hawaiians with much the same opportunity to reorganize and establish a self-governing body that Congress has furnished to the Indian Tribes elsewhere in the United States that the Court referred to – it would make the most sense to adopt an interim definition that draws upon past practices under Congress's Indian affairs power.

Thus, we recommend an alternative interim definition that references the Hawaiian Homes Commission Act (HHCA), Pub. L. No. 67-34, 42 Stat. 108 (1921). There are several reasons for this recommendation. First, the HHCA was itself an exercise of Congress' Indian affairs power not long after annexation, and it thus represents an established Federal law process for determining who is a Native Hawaiian for federal purposes. See H.R. Rep. 839, 66th Cong., 2d Sess. 4 (1920) (statement of Secretary Lane expressly mentioning the trust relationship that exists between the United States and Native Hawaiians). Second, the HHCA presents a definition that is tied to those Native Hawaiians who are eligible to reside on distinctly native Hawaiian lands, and which can reasonably serve as an indication of those Native Hawaiians who maintain close ties to the Native Hawaiian community. Third, insofar as lineal descendancy is concerned, this definition traces to 1778, the date of European contact, rather than 1893, after the arrival of Europeans and Americans. Finally, the Department of Hawaiian Home Lands maintains a record keeping system regarding eligibility for HHCA lands, which will make the

interim reorganizational process more definitive and thus less complicated. This recommendation is intended to ensure that this legislation serves as an enduring measure to provide a strong foundation for Native Hawaiian self-governance within the framework of federal law.

Accordingly, we recommend the following interim definition of the term Native Hawaiian:

A Native Hawaiian is any person:

(a)(i) who is eligible to hold Hawaiian Home lands as a Native Hawaiian directly or by devise under the Hawaiian Homes Commission Act, Public Law 67-34, 42 Stat. 108, as amended, and (ii) who voluntarily affiliates with the Native Hawaiian people as a political community; or

(b)(i) who is a lineal descendant of a Native Hawaiian who is or was eligible to hold Hawaiian Home Lands directly or by devise under Public Law 67-34, 42 Stat. 108, as amended, (ii) who is recognized by the Native Hawaiian community as a Native Hawaiian, and (iii) who voluntarily affiliates with the Native Hawaiian people as a political community.

Finally, it is important to note that the purpose of the interim definition is to provide a means of implementing this legislation, which first seeks to establish a Native Hawaiian Interim Governing Council. Once that is accomplished, the Native Hawaiian people may then determine their own membership just as other native communities. A tribe's "right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community." Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 n.32 (1978). Section 7(c)(7)(D) expressly states that the organic documents of the governing body will vest it with the power to "determine the membership in the Native Hawaiian governing body."

D. Transfer of Authority Over HHCA and Ceded Lands Trust to the Native Hawaiian Governing Body

Section 9(a) of the bills reaffirms the delegation of authority by the United States to the State of Hawaii over the HHCA in Hawaii's Admissions Act. Section 9(b) then authorizes the United States to negotiate an agreement between the State and the Native Hawaiian governing body that would transfer authority over "lands, resources, and assets dedicated to Native Hawaiian use under existing law" to the Native Hawaiian governing body. We support the premise of providing the Native Hawaiian governing body with primary authority over these programs.

However, we recommend an alternative provision that would authorize the State and the Native Hawaiian governing body to negotiate a transfer of authority over governmental services provided by the State to the Native Hawaiian governing body, subject to the approval of the

Secretary. This alternative would provision better serves the Native Hawaiian community because the State is, at present, the administrator of the HHCA and the ceded lands trust, not the United States. Our alternative provision would also provides express protection for the justified expectations of Native Hawaiians under the HHCA.

Conclusion

In conclusion, the Department of Justice generally supports S. 2899 and H.R. 4904, and is committed to working closely with the Native Hawaiian people and the Congress, upon enactment of this legislation, to address successfully the steps to Federal recognition, self-determination, and self-governance for the Native Hawaiian people. There are a number of prospective matters that the Federal Government may have to work out with the Native Hawaiian governing body and the State of Hawaii, through future legislation. These challenges may include:

- potential land claims that Native Hawaiians may assert against the United States, the State of Hawaii, or private landowners;
- the nature and extent of the rights, obligations and benefits in extending Federal recognition to Native Hawaiians under the Native American Indian statutes;
- the Federal Government's trust and fiduciary responsibilities for any federal lands that may be transferred to the Native Hawaiian community; and
- the relative responsibilities of the Native Hawaiian community and the State of Hawaii and its local governments in providing schools, law enforcement, and other public services.

With the permission of the Committees, the Department intends to supplement this testimony with additional views on S. 2899 and H.R. 4904 before the record is closed. Once again, thank you for this opportunity to present views on this important legislation.

Date: August 22, 2000

To: U.S. Senate Committee on Indian Affairs
U.S. House Committee on Resources
Joint Hearings

Fr: Robin J Puanani Danner
P.O. Box 1976
Kapa'a, HI 96746
808/821-0158

Re: S. 2899 and H.R. 4904 – A bill to clarify the political relationship between the United States of America and the Native Hawaiians

Aloha Members of Congress. Mahalo for this opportunity to present testimony regarding the legislation introduced that will establish a new level of United States policy toward the aboriginal people of Hawaii. I am a native Hawaiian, born on Kauai and currently living on Hawaiian Homelands for the last 2 years. I have spent 35 years on the reservations of the proud Apache, Navajo and Hopi people and the ancestral lands of the Inupiat Eskimos of northern Alaska. I know well the meaning of federal recognition to an aboriginal people, both the advantages and the disadvantages. I have lived it on a daily basis, worked within the parameters, which include limitations, and likewise reap tremendous opportunities.

Perfect Sovereignty does not exist on earth, only in the heavens, but perfect sovereignty is the goal, the benchmark of people everywhere, to seek the highest and best form of governance for the betterment of all. The hearts and souls of Hawaiians, the energy of each of us will undoubtedly continue to seek and should seek to perfect our sovereignty, to achieve and exercise its highest and best form. With this in mind, I view the exercise of sovereignty and the goal of perfecting it for the Hawaiian people as a journey, as an achievement to be embraced in degrees. Your legislation directs the United States internally, to recognize a greater degree of our sovereignty, and in doing so, we will have traveled a little bit farther in our journey. I can support the legislation because it is not a treaty, it is not a contract with the Hawaiian people that requires us to give up any claims, any rights to lands or total and complete autonomous sovereignty. I can support it because it is not a mandate on me or any other Hawaiian. It is a mandate on yourselves, on every federal official, on every federal agency, every corner and crevice of the government of the United States. Your legislation tells all of these entities and every state and county government in America, that Hawaiians are not minority citizens. Your legislation recognizes another sphere, that Hawaiians have the right beyond citizenship in America, we have the right of citizenship to our own government by our choice.

This mandate, this legislation you have introduced, will provide protection of assets that belong to us. A simple sentence really, but the impact looming is so large, so great. Without this mandate for yourselves, for the U.S. Government to guide itself, Hawaiians

stand to lose not millions, but billions of dollars. The impact of such a loss is almost inconceivable.

This mandate for the U.S. Government will slow the assault on our people, represented in statistics of homelessness, life threatening health conditions, incarceration and so much more. No, it does not solve these challenges, but it moves us in our journey and our fight for the right to solve these issues ourselves, the exercise of sovereignty.

Much has been said about whether this bill attempts to turn me, a Hawaiian, into an Indian or an Eskimo. Neither this bill, nor any bill can accomplish this. The Indian people, the Alaska Natives are as proud as I am of their heritage and will defend their rights to self-determination until their last breath is taken. They have settled for nothing, they continue to march onward and to embrace every degree of sovereignty possible. My words need not convince anyone, over 500 years of fact, of history, the blood of warriors, their women and children, the tears of their grandmothers are proof of their noble and successful stands. They will continue to rise up, to live through and to fight for every degree of self-determination. And they have used every victory won, to prepare for the next battle, to regain set backs along their journey. Your legislation represents a victory for the day to day issues that face our people. And if passed by the congress, we will stand upon it to fight the next day.

Senators and Representatives, I would like to close by saying I know this legislation is not the end, it is the beginning. You know that more will need to follow, that there are many more degrees of sovereignty to be won on the battlefield of the U.S. Congress. I appreciate each of you for taking up the cause, not for giving me sovereignty, it is not yours to give. But for pursuing a United States law that requires my sovereignty, my status as a citizen of my own native government, to be recognized by every government in America.

And finally, I would like to thank you for respecting the work of Hawaiians who continue to fight on other battlefields, in the international arena. You have respected their ongoing work and have drafted a mandate for the US Government to follow that does not impede those efforts.

Mahalo.

U.S. Senate Committee on Indian Affairs
U.S. House of Representatives Committee on Resources
Joint Hearings on S.2899 and HB.4904
Lihu'e, Kaua'i, Hawai'i on August 28, 2000

Oral & Written Testimony of:
Jade Leialoha Danner
P.O. Box 1976
Kapa'a, HI 96746
(808) 821-0397

Aloha Senators Akaka and Inouye and Representatives Abercrombie and Mink. Thank you for this opportunity to testify in support with amendments of S.2899 and its companion HB 4904. I believe firmly that although this bill will not solve all of the issues that confront Native Hawaiians, it is a good first step. I want to thank you for your willingness to work with us in changing this bill prior to its introduction, and hope that you will continue to work with us to address concerns that have not been addressed to date.

I anticipate that this bill will receive some opposition from those who either feel there is no constitutional basis for Native Hawaiian autonomy, or that this bill violates the stated desires of Queen Lili'uokalani for her people. Those opposed to this bill based on a constitutional argument do not understand the nature, purpose or history of the United States' recognition of its political relationship with its indigenous peoples. The mantra "we are all Americans" reveals a selective view of what it means to be an American, how one becomes an American, and the necessity of choice in the matter. It also illustrates a narrow view of the reasons people create a government and establish a territorial base in the first place.

The United States was founded in order establish a territorial base to protect and perpetuate a specific set of beliefs and a specific way of life. Without it, the American belief in a government <u>of</u> the people would otherwise have been extinguished under continued English rule. Those colonists, and every immigrant since, chose, for themselves and their descendents, to abandon their own countries, their original ways of life, and live by an American standard. By example, on my German father's side, his grandfather made the choice to abandon Germany and become part of another people. He left knowing that the German culture and people would continue to thrive in Germany. Not even being defeated in both World Wars has threatened the German way of life or their ability to choose their own political structures. No choice to leave our homeland was made by any of my Native Hawaiian mother's ancestors. We suffered no defeat in war, and yet our way of life is threatened.

The theory of democracy requires a government to have the consent of those governed. Yet there has been no affirmative statement by Native Hawaiians to freely consent to the United States' rule. We have not chosen to abandon our original ways of life in our own homeland. America chose to impose its way of life upon us. At best, the plight of the indigenous peoples of the United States can be described as making the most of bad situations. As Hawaiians, the continuation of our way of life, our language, our belief, and our knowledge of the environment, is contingent on our ability to make the decisions that impact us most.

This bill does not create special "racial" rights, it acknowledges the rights of Hawai'i's original people to choose. The US policy on self-governance affords indigenous peoples some aspects of the choice

that was afforded to all immigrants when they came to America—to live as a Native in your own homeland or to live as an American in America. The challenge for Native Americans, of course, is to walk in both worlds because both worlds exist in the same territorial bounds. America sits on our homelands.

Eventually, the United States learned that indigenous peoples are not a threat to its democratic society. It was a lesson many indigenous peoples paid for with the loss of language, cultural and religious practices, ancestral and sacred lands, and unfortunately, in some instances, their very existence as a people. America learned we are one of it's best features because we are a constant reminder of its founding principles—that justice, diversity and freedom of choice is good for a government of the people.

Denying the injustice against Native Hawaiians and our rights is to condone it, to support it and to bankrupt our democratic society with it. This bill cannot undo the harm, but it can be the first step in a long process of returning my people to self-sufficiency and self-governance. It can begin providing a space where Hawaiian values and ways of life are not in direct and perpetual conflict with the ability to house, clothe, feed and protect our children. It is the first step to being able to truly protect our sacred sites, kupuna 'iwi and fragile ecosystem while developing economic opportunities and moving towards a better and more just Hawaii in the new century.

As other states have realized, greater autonomy and control for Native peoples results in better conditions for all, statewide. I know that in the coming years, the state of Hawaii will realize the myriad of benefits of working in partnership with the Native Hawaiian Government in solving the challenges that face us all.

For many Native Hawaiians opposing this bill, independence is the only way to remain loyal to the memory of Queen Lili'uokalani and avoid further disappointment by the US. The hearts of our people still belong to her. The pain of the overthrow is alive today. It is the pain of the betrayal of our queen's faith in and reliance on the United States to uphold its treaties of friendship. It is at the root of our distrust of the United States and its policies. Although I feel the same hurt, I support this bill. Lili'uokalani yielded her throne in protest because she believed more firmly in something else—the continued life of our people. She believed our existence on this planet was more important than any principle of law or existence of sovereign government. She decided not to wage war to save our lives. On that decision, she was right.

Now, our people are among the worst in every kind of statistic, from poor health, to homelessness, to poverty and incarceration. Our way of life is in danger of being lost and our people are suffering because policies and decisions that impact us most are made by parties who don't represent us, and aren't accountable to us.

We need an enforceable measure of autonomy and control in our future as a people if we are going to be able to continue to exist as a people. I ask you to pass this bill with the amendments I have outlined in the attached testimony. Thank you for this opportunity to testify before you today. I really believe this legislation is the first step to rectifying the injustices of the past and providing an opportunity of the Native Hawaiian people to secure better futures for our children.

U.S. Senate Committee on Indian Affairs
U.S. House of Representatives Committee on Resources
Joint Hearings on S.2899 and HB.4904
Lihu'e, Kaua'i, Hawai'i on August 28, 2000

Written Testimony of:
Jade Leialoha Danner
P.O. Box 1976
Kapa'a, HI 96746
(808) 821-0397

In an effort to address specific concerns with the language of this bill, I will be outlining each concern and recommended language by page and line number. Deleted text is in brackets, and inserted text is underlined.

Page 2 Line 19
I recommend that the line be amended to read "Hawaii in order to [establish a homeland for] better the conditions of". I am concerned that a Congressional finding that states that the 200,000 acres set aside in the Hawaiian Homes Commission Act of 1920 was to "establish a homeland for" Native Hawaiians will result in a future federal position that no additional lands need to be provided to the Native Hawaiian government. Should this finding result in such a position, there would be several difficulties for the Native Hawaiian people. First, the existing set-aside does not meet the needs of those currently qualified for and awaiting residential and agricultural or pastoral lands. Perhaps at the time the Hawaiian Homes Commission Act was passed, 200,000 acres was a sufficient "homeland" for the population of native Hawaiian people. Unfortunately, that trust was not administered as it was intended for three generations and irreparable harm has been caused to individual native Hawaiian families and our culture, language and way of life as well. Long-term leasing of much of the lands to sugar and other big business for more than 70 years can hardly be considered the establishment of a "homeland". The expanded definition of Native Hawaiian to include a much larger population will require more land to meet our needs.

Page 3 Line 16
To maintain continuity with the rest of the act, I recommend the line be amended to read "States to the [N]native".

Page 6 Line 4
I recommend the language be amended to read "native community and to reorganize". As an aside, line 3 may require the deletion of the word "aboriginal". In Section 2, there are two separate definitions for "aboriginal, indigenous, native people" and "indigenous, native people." In considering the two definitions together, it seems that the addition of the word "aboriginal" is intended to mean the people who were alive in what is now the United States before European contact, whereas its absence means their descendents, or modern day Natives. The finding on page 6 lines 1-7 is referring to the reorganization of a governing body by modern day Native Hawaiians, not those Hawaiians alive before European contact.

Page 10 Line 6
I recommend that the line be amended to read "the State of Hawaii on or before January". Some Native Hawaiians left the islands to work prior to January 1, 1893. The fact that they made an economic decision to work on the North American continent or on the ships that frequently passed through Hawaii does not necessarily mean they were relinquishing their citizenship or status as aboriginal, indigenous, native people. Their descendants should be included in the definition of "Native Hawaiian."

Page 11 Line 1
I recommend that "adult members of the" be deleted and the line be amended to read "governing body created by the adult members of the Native". As the definition of "Native Hawaiian governing body" currently reads, it means the adult members, as opposed to a governing body created by the adult members.

Page 12 Line 23
I recommend the line be amended to read "reconciliation and political and trust relations". Unless the policy section of this bill reflects that it is US policy to acknowledge the trust relationship, challenges to whether or not Congress intends Native Hawaiians to have at least the minimum benefits that other Natives have as a result of their trust relationship could result.

Page 14 Line 5
I recommend amending the language to read "Native Hawaiian people and governing body" to insure consultation with the governing body.

Page 15 Line 25
I recommend amending the language to read "political, [and] legal and trust relationship" for the same reasons outlined for page 12 line 23.

Page 16 Line 5
Same as page 15 line 25.

Page 18 Line 23
I recommend that the line be amended to read "Hawaii on or before January 1, 1893" for the same reasons outlined on page 10 line 6.

Page 19 Lines 12-20
Section 7 (a)(2)(A) Commission does not define who establishes the commission. If the assumption is that the Secretary of the Interior is to appoint a commission, the language of this section should reflect that fact and require input from the Native Hawaiian community to nominate candidates for appointment.

Page 19 Lines 21-24
While it would make sense for the commission or a local office of the Department of the Interior to receive applications and compile the roll, there is no mandatory timeline for the first submission of the roll to the Secretary. I recommend language be added to set a deadline of 18

months from the passage of the act, or 1 year from the appropriation of funds to develop the roll for its first submission.

Page 24 Line 24
I recommend amending the language to read "Governing Council[.], and the implementation of its duties as outlined in section 7(b) and 7(c). The language as it currently reads only authorizes the roll to serve as basis for participating in the organizing of the Native Hawaiian Interim Governing Council, but does not extend to the ratification of any documents or elections that come out of the work of that Council.

Page 25 Line 22
I recommend amending the language to read "Within 45 days of the completion of the" because the meeting of the roll may take months before an agreement about the structure of the Native Hawaiian Interim Governing Council is reached. Elections of that Council should be held 45 days after the structure is defined in the general meeting of the membership.

Page 29 Lines 4-11
This section currently provides for a second ratification election in the event that the first ratification fails. The language of this clause should be amended to reflect an authority to conduct as many elections as is required to ratify the organic governing documents.

Attention; Joint Hearings of Senate Indian Affairs and House Committee on Resources

Greetings,

My name is Keohokui Kauihana. I am representing my family, friends and community. I am a Kanaka Maoli, the aboriginal people of these islands.

The Kanaka Maoli were the only peoples that populated these islands prior to the coming of Capt. Cook. No other ethnic group of people lived here prior to Cook. Only the Kanaka-Maoli.

When Capt. Cook arrived he first called these islands the "Sandwich Islands". He then changed the name to the Hawaiian Islands or Hawaii. If these islands were still called the Sandwich Islands, the people living here would not be called Hawaiians, but Sandwichians. The aboriginal people would still be called Kanaka Maoli, and the other ethnic groups of people would be called the geographical location of residence, which is done through out the world.

Using this example of name calling,it is obvious that the Kanaka Maoli is the proper and perfect name to identify the first comers to these islands, not native-Hawaiians or Hawaiians, whom consists of the other ethnic peoples.

For over a hundred years the State and Federal governments have mis-identified the aboriginal people. This "special relationship" must end.

In 1893, with the help of the United States Navy, the sugar-plantation owners staged an illegal-overthrow of a friendly government and allied to the United States of America. The Hawaiian Kingdom was illegally annexed through a "resolution" to America. After the overthrow it was illegal to speak your language, to practice your custums, to use your national lands and to call yourself a Kanaka Maoli.

It is clear that the Hawaiians with the help of the U.S.Navy overthrew the Kanaka Maoli peoples, who has the inherent-sovereignty over these lands.

Because of this testamonies of facts, I and my ancestors of past. present and future, object to this bill, that would give my statis to another. This special relationship will not be tolerated by the Kanaka Maoli. The rights and privileges that this bill gives to native-Hawaiians, rightfully belong to the Kanaka Maoli.

With the passing of this bill you the Joint Hearings Committee will be completing the "Cycle of Genecide" which started with the overthrow and exists to this very day with this bill.

This is an unlawful state that uses American juridiction to ignor Hawaiian Kingdom Laws. Kanaka Maoli's are presently being trialed with prejudice in the Hawaii State Courts. Because he is not a citizen of the United States he may not participate in public office elections. Under U.S. jurisdiction the Kanaka Maoli is a criminal and fugitive.

The only alternative was to represent himself. A grass-roots initiative called the "Lawful Hawaiian Government" with 48 delegates representing all the islands was formed to address the Kanaka Maoli and reenstate his office which was once called the Hawaiian Kingdom.

We pray that you the Joint Hearings Committee now see the light and dismiss this "chameleon bill" and recognize the Kanaka Maoli as the aboriginal people who claims sovereignty over their lands which now constitudes the State of Hawaii.

We urge you to support the "position papers" submitted to the American and State governments by the Lawful Hawaiian government and to acknowlege the treaties we secured when we were a "constitutional Kingdom".

We pray that you the Joint Hearings Committe acknowlege our true identity and support our self-determination as an independent sovereignt nation.

May the "All Mighty" guide your thoughts and hearts. Blessing to all peoples near and far.

I will now attempt to unite our people by singing our National Anthem, Hawaii Pono'I.

Sincerely, Keohokui K. Kauihana

P.O. Box 92

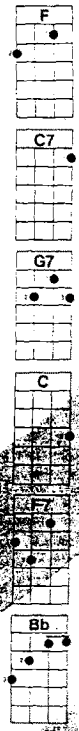
HAWAI'I PONO'I

King Kalakaua
H. Berger

F C7
1. Ha wai 'i | po _ no'i
& F
Na na i | kou _ mo i
G7 C
Ka la ni | A _ li'i
G7 C
Ke A _ li | 'i _ _
&

C C7
HUI: Ma ku a | la _ ni e
C F
Ka me ha | me _ ha e
F7 Bb
Na kau-a e-pa | le _ _
C7 F
Me ka _ i | he _ _
&

F C7
2. Ha wai 'i | po _ no'i
& F
Na na i | na _ li 'i
G7 C
Na pu a | mu _ li kou
G7 C
Na po _ ki | 'i _
&



F
C7
G7
C
F7
Bb

HAWAI'I PONO'I

1. [illegible]

[illegible] Royal father,
Na kaua e pale, Kamehameha,
Me ka ihe. We shall defend,
With spears.

2. Hawai'i pono'i, Hawaii's own,
Nana i na ali'i, Look to your chiefs,
Na pua muli kou, The children after you,
[illegible] young.

[illegible] NA MELE O HAWAI'I NEI

Rec[illegible]ording: Charles K.L. Davis, Royal Records RY III

Kai`ōpua Fyfe
P.O. Box 3870 Lihu'e, Kaua`i 96766-6870 Ph 808 246-8899 Fax: 246-0022 E-Mail: kaiokauai@aol.com

The Honorable Senator Daniel K. Akaka
720 Hart Senate Office Building
Washington, D.C. 20510-1103

August 28, 2000

Subject: S. 2899 and H.R. 4904

Aloha kaua e Senator Akaka:

Greetings to the Hawai`i Congressional Delegation, and members and staff of the Senate Committee on Indian Affairs and the House Resource Committee.

To you Senator Akaka, I extend my sincere wishes for your speedy recovery from your recent surgery.

At the same time, I solicit prayers of support for Henry E. Smith, Jr. and his `ohana. Henry suffered a stroke on our home island of Kaua`i last week as he continued to strive for the attainment of self-determination. Henry is the duly-elected Delegate to the `Aha Hawai`i `Oiwi, the Native Hawaiian Convention, representing Anahola, Kaua`i. We are reminded of the tragic death of Henry's brother, Kahale Smith, who perished in the flames that destroyed him and a defective Hawaiian Homelands residence during the regrettable eviction incident just four years ago.

To preface my remarks on S. 2899 and H.R. 4904, I cite what has become my personal self-determination mantra - "First thing, na kanaka Hawai`i maoli must achieve unity of purpose; from there, the sky's the limit."

That being said, I must inform you that I cannot support S. 2899 and H.R. 4904, as-written.

These measures were drafted and submitted to Congress without incorporation of the mana`o of na kanaka Hawai`i maoli. These measures were drafted and submitted to Congress prior to the achievement of that

absolutely-mandatory "unity of purpose".

Basically, S. 2899 and H.R. 4904 are not pono; they are not appropriate; they are not grounded, in any way, in the mana`o of na kanaka Hawai`i maoli. Instead, they, are grounded in the environment of fear and greed that runs rampant today. Fear of the loss of Federal funding for Native Hawaiian programs. Greed for the anticipated riches to be gained as a result of Federal recognition as "indigenous native Americans".

If we only like money, short-term - these measures are the way. If we like long-term, open options for self-determination based on that pono "unity of purpose", we must oppose them.

I cannot support S. 2899 and H.R. 4904, as-written.

On July 30th, I participated in the development and adoption of a position statement by the Executive Council of the `Aha Hawai`i `Oiwi. It has been officially distributed, by mail, to all of you. No doubt, you'll hear numerous references to it throughout the balance of this weeks Hearings.

The following are excerpts from that statement:

"The `Aha Hawai`i `Oiwi shares the common concern for the protection of the benefits of the Native Hawaiian people, but not at the expense of the loss of self-determination as defined under international norms.

With due respect for your efforts and those of Senator Daniel K. Inouye, and Representative Neil Abercrombie, the `Aha Hawai`i `Oiwi cannot support the Akaka Recognition Bill, S. 2899 or the companion measure H.R. 4904 as introduced on July 20,2000, which measures define the rights of Native Hawaiians as synonymous with those of Native Americans." . . . and;

"Further, this bill attempts to duplicate and replace the actions of the `Aha Hawai`i `Oiwi, an entity duly empowered by 22,294 registered Native Hawaiian voters; thus this bill usurps these taro roots efforts, this native initiative."

Further, I fully support the following mana`o as expressed by Reidar H. K. Smith, an active Delegate to the `Aha Hawai`i `Oiwi. Reidar is one of several Delegates who represent kanaka Hawai`i maoli who reside outside of Hawai`i ka Pae `Aina. He says:

"One hundred and two years ago the U.S. Congress passed a joint resolution annexing Hawaii as a Territory. Nobody ever bothered to ask the Hawaiian people what they wanted. Some of the leaders of Hawaii at that time thought that being a U.S. Territory would be best for the Hawaiian people. These leaders thought that, like children, Hawaiians weren't ready to decide for themselves or make such an important decision. Our kupunas were never offered the vote to accept or reject that congressional resolution. Yet, their petitions against annexation (still on record) show they would have rejected it.

Today the U.S. Congress and some of our leaders in Hawaii are trying to do it again. They propose to recognize us as Native Americans, to give us indigenous rights and save some entitlements already approved by Congress. What they don't tell us is this may also take away our rights to the ceded lands, shorelines, ocean economic zone and gathering rights. This bill also diminishes the greatest right of the Hawaiian people, the right of self determination. Hawaiians have the right to choose between indigenous rights or the right to re-establish our sovereign nation (and then choose a type of government for our nation). We even have the right to choose to remain with the status quo.

I oppose this bill as presently written because it puts the cart ahead of the horse. It determines what rights Hawaiians will receive, and THEN calls for a "roll" of all Hawaiians who will choose which form of government we want on our "reservation". Why not get that "roll" first so that Hawaiians can make both decisions. This time let the Hawaiian people decide. The 1993 U.S. Apology Bill asked for reconciliation and offered the next move to the Hawaiian people, not to this Congress. This bill is deja vu 1898 all over again."

Mahalo a nui loa for your time and consideration,

Kai Opua

Kai`ōpua Fyfe

Attention ; Joint Hearings of Indian Affairs and House Committee on Resources

Greetings ,

My name is KeKane Pa. I'm a descendent of Kaheowa'anuiponiliihoapa'ipa'inohohupa (The great canoe that flows and is anointed by the rising, thrusting, and Landings of the waters).Which our Lineage traces to KING KALANI OPU'U. He was like a Judge that went from one district to other districts, and later took on the last syllable of his name as (PA).Kanaka maoli on his National land, the only humans that populated these islands prior to 1778. I'm speaking on behalf of my family from time immemorial to present time. The Kanaka maoli are the First comers, they are the Aboriginal class of people of these National lands, Birth name and birthrights to their Nation not to America. This is foreign soil not American soil.
The Petition of 1897 clearly states that America cannot use the word Native Hawaiian in any form or shape, So all of these Hawaiians that supports this bill needs to be informed that they are giving up their birthrights to their National lands and giving up their rights to speak or represent their Nation and Country. They will be recognized as Native Americans and not Native Hawaiians as a second class Citizen under the Federal Statues. Mr. Inouye , Mr. Akaka must inform these people respectively, the Native Hawaiian Task Force admits that the Federal Government never had relationship with Native Hawaiians, so how could the State Of Hawaii have an office such as OHA to represent these Aboriginal class of people not Indigenous. This is a Political attack against the Kanaka Maoli culture and religion and(Genocide) Deliberate and Methodical Annihilation of a National or Racial group under 1987 (the Proxmire Act) 18 USC-1091 102 Stat. 3045.This is a move to protect the Federal Government's interest and Conspirators that participated in destroying ones Nation without a Treaty from the Hawaiian Kingdom. This is an unlawful state that uses American Jurisdiction to ignore Hawaiian Kingdom Laws and commercialize their National land.
The Reinstated Lawful Government of the Hawaiian Kingdom /Kingdom of Hawaii return from Exile March 13, 1999 using the highest laws on the Planet. Na Kanaka Maoli representing all the districts described in the Hawaiian Kingdom Laws reinstated the de jure (lawful) Hawaiian Government using Universal law: the law of Nations , Natural Law, and international law. It also uses the laws of the Hawaiian Kingdom. These individuals repatriated back to their Nation. United States of America is aware of this Government that's why they're acting on this Apology bill that was recognized in 1993. They had seven years to work out a relationship now they want to do it within Four Months and Ram it down our throats. Hawaiians must realize they're falling into another trap. Senator Inouye's trap who took part in creating OHA who lost in the U.S supreme courts Rice vs. Cayetano because of discrimination we never had and never will have self-determination under Federal Status. United States of America and the State of Hawaii is a De-Facto and Illegal State and Government on the Kanaka Maoli National Foreign soil known as the NATION OF HAWAII. The Federal Government is trying to have a status to protect all of these Sugar Plantation companies that stole the land and made everybody believe that this is America, that they have the right to sell our National lands without a treaty from the Hawaiian Kingdom. These are my arguments.

The United States Supreme Court had ruled that the "... municipal laws of one nation do not extend, In their operation, beyond its own territory. " See" The Apollon, Edon. Claiment," 9 Wheat 362 (U.S. Supreme Court). United States Congressional Acts have no effect in the Hawaiian Islands.

Without a Treaty of Annexation by the Hawaiian Kingdom, the following "municipal laws enacted by the United States congress have no legal effect in the Hawaiian Island, Which is outside of the territorial jurisdiction of the United States of America, Namely:

a. Joint Resolution purporting to annex the Hawaiian Island, July 7, 1898; See Joint Resolution of Annexation, U.S. Statutes at Large 30 (July 7, 1898): 750-751.
b. An Act purporting to provide a government for the Territory of Hawai'i , April 30, 1900; See Hawai'i Organic Act, U.S. Statutes at Large 31 April 30, 1900): 41-162.

c. An Act to amend the Act purporting to provide a government for the Territory of Hawaii, by establishing The Hawaiian Homes Commission, July 9, 1921: See Hawaiian Homes Commission Act, U.S. Statutes at Large 67 (July 9, 1921); 108-115.
d. An Act purporting to admit the state of Hawai'i into the Union, March18, 1959 and See Hawaii Statehood Act, U.S. Statutes at Large 73 (March 18, 1959): 4-13.

Existing Treaties between the Hawaiian Kingdom and The United States are the Treaty of Friendship, Commerce and Navigation, See Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom, U.S. Statutes at Large 18 (December 20, 1849): 406. See Convention of commercial Reciprocity with the Hawaiian Kingdom, U.S. Statutes at Large 19 (January 30,1875): 625, at 69.See Supplementary Convention to the Convention of Reciprocity with the Hawaiian Kingdom, U.S. Statutes at Large 25 (December 6, 1884): 1399.

United States Constitutional law Treaties entered into by the United States are the Supreme Law of its land. See U.S. Constitution, Article VI,~2, in part, to wit: " 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..."

The facts, The United States had no power "Extraterritorial" over the Hawaiian Kingdom or Hawaiian Subjects. See Mankishi vs. Hawai'i. 190 U.S. 197 (1903). The Supreme Court directly addressed the effect of the Joint Resolution. The Court held that the Resolution did not incorporate Hawaii as an integral part of the United States. See Inter Alia, Peacock and company vs. Republic of Hawai'i 12 Hawai'i 26 (1899). As well as the effect rendered by the attorney general of the United States, See 22 AG Opinions at 151 "The Tonnage Tax". Senator Foraker did in fact, Concede that the Joint Resolution had no power to "Annex" the people of Hawai'i, See31 congress Record at page 6585, 55th congress 2nd Session. This conclusion follows logically from his admission that the laws of the United States did not apply to Hawai'i that Congress had NO Power "Extraterritorial." ID.
Therefore the Defacto Courts of the State of Hawai'i judgement on a Hawaiian subject, is a violation of our Human Right's. This is evidence and proof. The United States of America and the State of Hawai'i is in an Act of Genocide and violation of Human Rights on a Hawaiian Subject. By the Constitution of the Hawaiian Kingdom ,with the treaties between the United States.

According to Constitutional Law these Treaties entered into by the United States are the Supreme Law of its land. Therefore all United States Laws enacted by its congress and IMPOSED in the Hawaiian Islands and are inferior to the 1849 Treaty, the 1875 and 1884 Convention and cannot be Legally enforced, without violating International Law and Comity. See U.S. Constitution, Article VI-2, in part, to wit.

Notice to this Joint Hearing of Indian Affairs and House Committee on Resource who are government employees of the United States of America and the State of Hawaii. Your obligation as a officer is to uphold the Law and to Comply with Compliance as an officer of the United States of America and to perform his or her duty under 28 USC Sec. 1361. I'm serving you notice that you will be liable to be held as Conspirators of Genocide and Human violations against a Foreign National of their Nation.

Kanaka Maoli
Sincerely : Kekane Pa
Kanaka Maoli
Kekane Pa

Contract Law:

Since 1959-1960, the de facto State of Hawaii has been deliberately and unlawfully changing the names of children from proper upper and lower case Christian names to ALL CAPITAL LETTER names when issuing "birth certificates" through the State of Hawaii Health Department. This is an unlawful and corrupt attempt to capture jurisdiction over the child without the child's or parent's knowledge. (I.E. By the law of contract, the parents are permitting their child to be adopted by the de facto State of Hawaii jurisdiction and the child becomes, legally, but not lawfully, a "ward of the State", without the knowledgeable consent of the child or parents). This is to place the new born (now adopted and without birth rights) in and under the foreign, de facto law jurisdiction of the State of Hawaii, and the federal United States jurisdiction, in bondage to the IRS, and outside of and away from its lawful birth rights which are alive in the de jure Hawaiian Kingdom. Have you ever wondered how the de facto State of Hawaii can take away a child without any reason and why the parents have no rights.

The Exile Is Over

The Reinstated Hawaiian Government

Returned from Exile on March 13, 1999

www.reinstated.org
(808) 732-3849

Get Ready To Be Happy

The true and rightful government of Hawai'i is back. The nation your ancestors created was **never** destroyed. It was brought out of a 106-year exile on March 13, 1999 at a convention of delegates from all islands.

A citizenship drive of all the residents of Hawai'i is being conducted to identify a distinct population to this re-emerging nation. Kanaka maoli, kanaka 'e and kama'aina are all given the choice to abandon their current nationality and pledge allegiance to Hawai'i. In doing so, we identify those individuals committed to reinstating the lawful Government of Hawai'i.

Those who had applied in 1999 were qualified to vote in an election that sent candidates from their district and island to the true Legislature of Hawai'i.

On November 6, 1999, that parliamental election was conducted. The eligible voters from the twenty-four voting districts sent twenty-four representatives and twenty-four nobles to serve them in the Legislature.

These legislators were sworn in on January 15, 2000. In March, this legislature amended and updated the Hawaiian Kingdom Constitution that was left in suspension for the last 107 years.

Your Nation Has Returned

Those residents of Hawai'i who swore allegiance to this re-emerging nation received copies of this Amended Hawaiian Constitution of 2000 and cast ballots in a Nationwide Vote to authorize this constitution on April 29th. This amended constitution was ratified by the voters in a majority of twenty districts.

With a ratified constitution in place, it is our job to fulfill the laws within this document. Positions in the executive and judicial branches have been filled since then.

The reinstatement process is nearly complete.

And the door is still open for all those who want to participate in the reinstatement of Hawai'i's nationhood. You can participate as a supporter, as a citizen-voter, as a community organizer, or as an office holder. Your choice.

So what country will recognize this government?!

The United States already recognizes it in U.S. Public Law 103-150. The governments of all other nations have been informed of our progress.

Now is the time for action! Support this effort for independence! Hawai'i will be an independent nation in the very near future. Get ready for it.

There are contact persons on every island:

East Honolulu
Keali'i Makekau (386-5050)
Kekoa Lake (732-3849)

Central Honolulu
Promise Ka'anapu (566-6932)

Moanalua-Aiea-Pearl City
Timothy Boner (487-2559)
Alika Luka (844-1796)

West O'ahu
Georgette Hugho (623-3097)

Wahiawa-Waialua-Haleiwa
Kawika Bell (637-7188)

Ko'olauloa
Donna Hanohano-Medeiros &
Robert Hanohano (293-8209)
Tat & Leo Enos (293-7126)

Ko'olaupoko
Walton Enos (262-8218)
Nowlin Correa (259-9005)

Moloka'i
Scott Adams (567-9419)
Miles Freeman (567-6016)

Maui Communications Office
Kelii Solomon (242-6840)

Lahaina, Maui
Keala Leong (667-1902)

Wailuku & Central Maui
Oliver Dukelow (242-4536)
David Podlewski (276-3830)
John Mahi, Jr. (242-8117)
Melvin Nakagawa (244-0788)

Upcountry Maui
Charles Ma'alea (572-8434)
Duke Enomoto, Jr. (878-2925)
Nelson Armitage (575-7831)

East Maui
Thomas Ko'omoa (572-3402)
Alika Moepono (573-1823)

West Hawai'i
Kingston Correa (324-6063)

East Hawai'i
Sam Kaleleiki (965-7430)
Robert Keliihoomalu (965-8764)

Kaua'i
Kekane Pa (635-4594)
Gilbert Medeiros (246-2631)
Max Medeiros (332-6308)
Moki Koani (338-1763)
Alika Ola Luka (822-9395)
Ray Manaku (821-2531)

This effort receives no financial assistance from the county, state or federal governments. It is underwritten by the generosity of private citizens.

ALAPALA HOOPII KUE-HOOHUIAINA.

I ka Mea Mahaloia WILLIAM McKINLEY, Peresidena, a me ka Aha Senate, o Amerika Huipuia.

MR KA MAHALO :—

NO KA MEA, na waihoia aku iuua o ka Aha Senate o Amerika Huipuia he Kuikahi no ka Hoohui aku ia Hawaii nei ia Amerika Huipuia i oleloia, no ka noonooia ma kona kau mau iloko o Dekemaba, M. H. 1897; nolaila,

O MAKOU, na poe no lakou na inoa malalo iho, he poe makaainana a poe noho oiwi Hawaii hoi no ka Apana o Kawaihau, Mokupuni o Kauai, he poe lala no ka AHAHUI HAWAII ALOHA AINA O KO HAWAII PAEAINA, a me na poe e ae i like ka manao makee me ko ka Ahahui i oleloia, ke kue aku nei me ka manao ikaika loa i ka hoohuiia aku o ko Hawaii Paeaina i oleloia ia Amerika Huipuia i oleloia ma kekahi auo a loina paha.

PETITION AGAINST ANNEXATION. 81

To His Excellency WILLIAM McKINLEY, President, and the Senate, of the United States of America.

GREETING :—

WHEREAS, there has been submitted to the Senate of the United States of America a Treaty for the Annexation of the Hawaiian Islands to the said United States of America, for consideration at its regular session in December, A. D. 1897; therefore,

WE, the undersigned, native Hawaiian citizens and residents of the District of ....., Island of ....., who are members of the HAWAIIAN PATRIOTIC LEAGUE OF THE HAWAIIAN ISLANDS, and others who are in sympathy with the said League, earnestly protest against the annexation of the said Hawaiian Islands to the said United States of America in any form or shape.

IKEA—ATTEST: Enoch Johnson, Kakauolelo—Secretary.

Sept. 11, 1897.

James Keauiluna Kaulia, Peresidena—President.

	INOA—NAME.	AGE.		INOA—NAME.	AGE.
1	Mr. G. B. Meheula	60	26	H. Kauli	80
2	Mr. B. P. Kamaka	22	27	Kakele Paniolo	77
3	Mr. J. Kanchoa	41	28	John Loodi	55
4	Sam. Keaupuni	37	29	Chang Loodi	27
5	P. Migell	41	30	Maioho Chang	12
6	S. L. Kekaula	29	31	Kalaponi J. Loodi	12
7	Sol. K. Kaulili	25	31	S. Kaai	30
8	P. Kaai	37	32	John Apolo	18
9	S. K. Kahai	41	33	J. W. Keone	17
10	I. Makanoe	55	34	K. Makanui	69
11	Kaiako	75	35	Kamakaifia	35
12	K. Pa	68	36	D. M. Naluahai	34
13	T.	13	37	Joseph Kainoa	36
14	Kamikana	12			
15	Keoni T.	12			
16	Eke Anina	12			
17	John S. Kaiu	13			
18	James Werner	16			
19	S. Kane	48			
20	E. Mole	12			
21	S. K. Kaaiua	12			
22	H. W. Pukalo	58			
23	Kopikolena	75			
24	Malae	25			
		16			

Appendix 6

Memorial

To the President, the Congress and the People of the United States of America.

This Memorial respectfully represents as follows:

1. That your memorialists are residents of the Hawaiian Islands; that the majority of them are aboriginal Hawaiians; and that all of them possess the qualifications provided for electors of representatives in the Hawaiian Legislature by the Constitution and laws prevailing in the Hawaiian Islands at the date of the overthrow of the Hawaiian Constitutional Government January 17, 1893.

2. That the supporters of the Hawaiian Constitution of 1887 have been, thence to the present time, in the year 1897, held in subjection by the armed forces of the Provisional Government of the Hawaiian Islands, and of its successor, the Republic of Hawaii; and have never yielded, and do not acknowledge a spontaneous or willing allegiance or support to said Provisional Government, or to said Republic of Hawaii.

3. That the Government of the Republic of Hawaii has no warrant for its existence in the support of the people of these Islands; that it was proclaimed and instituted and has hitherto existed and now exists, without considering the rights and wishes of a great majority of the residents, native and foreign born, of the Hawaiian Islands; and especially that said Government exists and maintains itself solely by force of arms, against the rights and wishes of almost the entire aboriginal population of these Islands.

4. That said Republic is not and never has been founded or conducted upon a basis of popular government or republican principles; that its Constitution was adopted by a convention, a majority of whose members were self-appointed, and the balance of whose members were elected by a numerically insignificant minority of the white and aboriginal male citizens and residents of these Islands; that a majority of the persons so voting for delegates to such Constitutional Convention was composed of aliens, and that a majority of said aliens so voting were of then very recent residents, without financial interests or social ties in the Islands.

5. That the Constitution so adopted by said Convention has never been submitted to a vote of the people of these Islands; but was promulgated and established over the said Islands, and has ever since been maintained, only by force of arms, and with indifference to the will of practically the entire aboriginal population, and a vast majority of the whole population of these Islands.

6. That the said Government, so existing under the title of the Republic of Hawaii, assumes and asserts, the right to extinguish the Hawaiian Nationality, heretofore existing, and to cede and convey all rights of sovereignty in and over the Hawaiian Islands and their dependencies to a foreign power, namely, to the United States of America.

7. That your memorialists have learned with grief and dismay that the President of the United States has entered into, and submitted for ratification by the United States Senate, a Treaty with the Government of the Republic of Hawaii, whereby it is proposed to extinguish our existence as a Nation, and to annex our territory to the United States.

8. That the Hawaiian people, during more than half a century prior to the events hereinabove recited, had been accustomed to participate in the Constitutional forms of Government, in the election of Legislatures, in the administration of justice through regularly constituted magistrates, courts and juries, and in the representative administration of public affairs, in which the principle of government by majorities has been acknowledged and firmly established.

9. That your memorialists humbly but fervently protest against the consummation of this invasion of their political rights; and they earnestly appeal to the President, the Congress and the People of the United States, to refrain from further participating in the wrong so proposed; and they invoke in support of this memorial the spirit of that immortal Instrument, the Declaration of American Independence; and especially the truth therein expressed, that Governments derive their just powers from the consent of the governed, and here repeat, that the consent of the people of the Hawaiian Islands to the forms of Government imposed by the so-called Republic of Hawaii, and to said proposed Treaty of Annexation, has never been asked by and is not accorded, either to said Government or to said project of Annexation.

10. That the consummation of the project of Annexation dealt with in said Treaty would be subversive of the personal and political rights of these memorialists, and of the Hawaiian people and Nation, and would be a negation of the rights and principles proclaimed in the Declaration of American Independence, in the Constitution of the United States, and in the schemes of government of all other civilized and representative Governments.

11. Wherefore your memorialists respectfully submit that they, no less than the citizens of any American Commonwealth, are entitled to select, ordain and establish for themselves, such forms of Government as to them shall seem most likely to effect their safety and happiness; and that questions of such moment to the Hawaiian people as are proposed to be settled by said Treaty, are questions upon which said people have the right, in the forum of Conscience, to be heard; and that said Hawaiian people have thus far been denied the privilege of being heard upon said questions.

12. And your memorialists humbly pray the President, Congress and the people of the United States, that no further steps be taken toward the ratification of said Treaty, or towrd the extinguishment of the Hawaiian Nationality, or toward the absorption of the Hawaiian people and territory into the body politic and territory of the United States of America, at least until the Hawaiian people, as represented by those citizens and residents of the Hawaiian Islands who, under the provisions of the Hawaiian Constitution, promulgated July 7, 1887, would be qualified to vote for representatives in the Legislature, shall have had the opportunity to express at the ballot box, their wishes as to whether such project of Annexation shall be accepted or rejected.

13. And your memorialists, for themselves, and in behalf of the Hawaiian people, and of the residents of the Hawaiian Islands, pledge their faith that if they shall be accorded the privilege of voting upon said questions, at a free and fair election to be held for that purpose; and if a fair count of the votes that shall be cast at such election shall show a majority in favor of such Annexation, these memorialists, and the Hawaiian people will yield a ready and cheerful acquiescence in said project.

Honolulu, Hawaii October 8, 1897

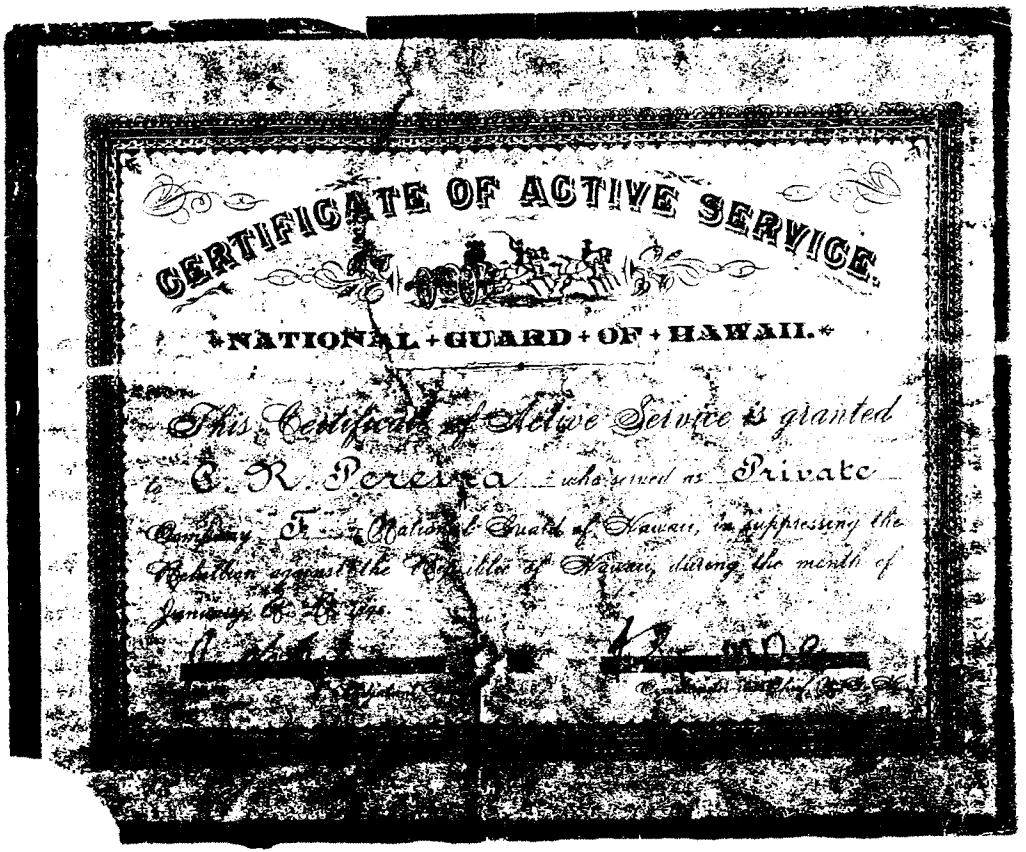
ss: J. Kalua Kahookano
Samuel K. Pua
F.J. Testa
C.B. Maile
Samual K. Kamakaia
James Keauiluna Kaulia
President of the Hawaiian Patriotic League (Hui Aloha'aina)
David Kalauokalani
President of the Hawaiian Political Association (Hui Kalai'aina)

UPON THE INSURRECTION OF JANUARY 1893, QUEEN LILI'UOKALANI -- CONSTITUTIONAL MONARCH OF THE SOVEREIGN KINGDOM OF HAWAI'I -- ISSUED THE FOLLOWING PROTEST LETTER TO U.S. PRESIDENT GROVER CLEVELAND, DEMANDING THE REMOVAL OF THE U.S. MARINES ABETTING THE CONSPIRATORS IN THE COUP D'ETAT. THE APPLICATION OF THIS DOCUMENT AND THE MEMORIAL PETITION OF 1897 HAS RAMIFICATIONS IN INTERNATIONAL PUBLIC LAW. IT PROVES THAT THE QUEEN AND HER SUBJECTS NEVER SURRENDERED UNCONDITIONALLY TO THE GOVERNMENT THAT WOULD SUCCEED IT; THEREBY BRANDING EVERY SUCCESSIVE GOVERNMENT IN HAWAI'I AS A DE FACTO GOVERNMENT. THE LAWFUL HAWAIIAN GOVERNMENT FOREVER RETAINS ITS STATUS AS THE DE JURE GOVERNMENT.

I, LILI'UOKALANI, BY THE GRACE OF GOD AND UNDER THE CONSTITUTION OF THE HAWAIIAN KINGDOM, QUEEN, DO HEREBY SOLEMNLY PROTEST AGAINST ANY AND ALL ACTS DONE AGAINST MYSELF AND THE CONSTITUTIONAL GOVERNMENT OF THE HAWAIIAN KINGDOM BY CERTAIN PERSONS CLAIMING TO ESTABLISH A PROVISIONAL GOVERNMENT OF AND FOR THIS KINGDOM.

THAT I YIELD TO THE SUPERIOR FORCE OF THE UNITED STATES OF AMERICA WHOSE MINISTER PLENIPOTENTIARY, HIS EXCELLENCY JOHN L. STEVENS, HAS CAUSED UNITED STATES TROOPS TO BE LANDED AT HONOLULU AND DECLARED THAT HE WOULD SUPPORT THE PROVISIONAL GOVERNMENT. NOW TO AVOID COLLISION OF ARMED FORCES, AND PERHAPS THE LOSS OF LIFE, I DO THIS UNDER PROTEST AND IMPELLED BY SAID FORCE YIELD MY AUTHORITY UNTIL SUCH TIME AS THE GOVERNMENT OF THE UNITED STATES SHALL, UPON FACTS BEING PRESENTED TO IT, UNDO THE ACTION OF ITS REPRESENTATIVES AND REINSTATE ME IN THE AUTHORITY WHICH I CLAIM AS THE CONSTITUTIONAL SOVEREIGN OF THE HAWAIIAN ISLANDS.

DONE AT HONOLULU THIS 17TH DAY OF JANUARY, A.D. 1893.



CERTIFICATE OF ACTIVE SERVICE.

NATIONAL GUARD OF HAWAII.

This Certificate of Active Service is granted to C. R. Pereira who served as Private Company F National Guard of Hawaii, in suppressing the Rebellion against the Republic of Hawaii, during the month of January A. D. 1895.

[redacted]

JOSEPH PUNILEI MANINI , SR.
P. O. BOX 690201
Makaweli , Kauai Hi 96769
Phone: (808) 338 - 1538

To. :
THE SENATE OF THE UNITED STATES CONGRESS
SENATORS : Mr. AKAKA and Mr. INOUYE

PUBLIC HEARING OF A CONGRESSIONAL BILL ,
dated Aug. 28, 2000 , at KCC PERFORMING ARTS BUILDING ,
Time : 8:15 to 12 : 15 and 1 : 15 to 4 : 45

This testimony is a complaint presented publicly and filed with the Senators of the Congress of the United States of America, Mr. AKAKA and Mr. INOUYE on this 28th day of August in the year 2000 on the Island of Kauai (place name) MOKU PUNI , a portion of the Archipelago chain of Islands mark by survey as the Polynesian Triangle of the Pacific Ocean and inhabited by a family , a race of Kanaka Maoil Natives , since 200 B. C. a migration from Peru South America as recorded in family History records of JOSEPH PUNILEI MANINI , SR. , legal Heir at law and Grantee of my ancestral estate, Tax Map Key # The Polynesian Triangle of the Pacific Ocean , a private estate by Title Deed Docket No. 99 - 193279 recorded in the Bureau of Conveyances of the State of Hawaii, Dec. 7, 1999 at 10:00 A. M. /s/ CARL T. WATANABE acting Registrar of Conveyances M. PANG for Registrar of Conveyances Assistant Registrar , Land Court State of Hawaii , Certify Dec. 7, 1999 in Honolulu , Oahu .

Continued :

2. THE INDIGENOUS NATIVE INHABITANCE

The Maoris , Tahitians , Samoans , Rarotongans , Aitutakians and Hawaiians , are all related by family History records as one family , a race of Kanaka Maoli Natives , a Nation of indigenous Native people who migrated and inhabited the Archipelago chain of Islands mark by survey as the Polynesian Triangle of the Pacific Ocean , since 200 B.C. , before the reign of Jesus Christ , our lord , and lived here as a Sovereign Nation .

3. Jurisdiction

The Constitutional law vested in the Congress of the United States of America has no authority to address jurisdiction over the archipelago chain of Islands mark by survey as the Polynesian Triangle of the Pacific Ocean of which the Islands name Hawaii are a portion off. as documented in Title Deed Docket No. 99 - 193279 (please examine Exhibit "A")

The Native people of Hawaiki these Islands have the rights to be the indigenous Kanaka Maoli Native , a sovereign Nation Or a portion of the Native people of the United States of America, Whereas the jurisdiction of the lands remains as a portion of the archipelago chain of Islands mark by survey as the Polynesian Triangle of the Pacific Ocean , a Private Estate not belonging to the United States of America an its people .

Continued :

Continued :

4. CONSTITUTIONAL LAW OF THE UNITED STATES

This record recorded and compared in the law library of Congress , statutes at large of the United States of America , the session of the 60th Congress , 1907 : 1909 , Vol. 35 part 2 (AE 2-111) , statute No. 2209 : 2210 , proclamation No. 827 dated : Dec. 4, 1908 by Theodore Roosevelt , president of the United States ,In pertinent part , Whereas , by joint resolution , to provide for annexing the Hawaiian Islands to the United States , approved July 7, 1898 , the session by the government of the Republic of Hawaii to the United States of the absolute Fee and ownership of all public , government , " or" CROWN LANDS .

The United States of America by it's Congress and it's president Theodore Roosevelt , Only accepted the CROWN LANDS of the KAMEHAMEHA ESTATE , in the joint resolution to provide for annexing the Hawaiian Islands , dated Dec. 4 , 1908 (See : exhibit "G" page 8 to 15 recorded in Exhibit "A")

5. KAMEHAMEHA I

According to History , Kamehameha didnot conquer nor overthrow the executor of Polynesia the Ruling Chief with the Red feather cloak and head dress .

Therefore according to international law , conquest is defined by Bouvier's Law Dictionary 1914 edition , as the taking

 Continued :

Continued :

of the Sovereignty of a country by force of arms exercised by an independent power which reduses the vanquished to a submission of the independent powers empire .

For further insight into understanding what constitutes a conquest look to the definition of the following words .

INDEPENDENT POWER

The right ability or faculty which is not subject to control , restriction , modification or limitation from any given outside source .

In view of the aforementioned , one could conclude that it takes an unconquered Nation to conquer another Nation , remember KAMEHAMEHA was not a Nation , nor did he control and empire .

6. SELF-INTERES

Furthermore KAMEHAMEHA didnot conquer the Nation of Puni , Puni , " POO" or executive of the Kanaka Maoli Natives of Polynesia , KAMEHAMEHA was merely acting in his own self-interes with no power, no authority and no jurisdiction to constitute an OVERTHROW or CONQUEST , therefore any and all properties acquired through the KAMEHAMEHA Estate as CROWN LANDS is Null and Void , for this Estate does not legally exist .

Continued :

Continued :

7. RESTITUTION OF OUR HERITAGE

The Nation of the United States of America , by it's Congress and it's president is with full authority to rectify this wrong that they have imposed on the indigenous Kanaka maoli Natives of the Polynesian Triangle of the Pacific Ocean and to reestablish there Sovereign Nation by returning all rights and possession of ownership to all of there properties , to the rightful owners as documented within this instrument , Title Deed Docket No. 99 - 193279 as recorded in the Bureau of Conveyances of the State of Hawaii (please examine Exhibit "A").

8. FINAL CONCLUSION

I sincerely extend my deep appreciation to the SENATE of the Congress of these United States, for your receipt of this document a complaint of which is self explantory that the jurisdiction of the Archipelago chain of Islands mark by survey as the Polynesian Triangle of the Pacific Ocean is a public record recorded in the Bureau of Conveyances of the State of Hawaii, as Title Deed Docket No. 99 - 193279 an certify Dec. 7, 1999 in Honolulu , Oahu .

Therefore , as the GRANTEE of this ESTATE, I am in opposition of this Congressional Bill , please take it back to drawing board , your claim of jurisdiction is a fraudulent scheme

Continued :

Continued :

and has no authority over the lands of the Hawaiian Islands of which is a portion of the Archipelago chain of Islands mark by survey as the Polynesian Triangle of the Pacific Ocean. MAHALO

Respectfully submitted

Joseph Punilei Manini, Sr.

JOSEPH PUNILEI MANINI, SR.
GRANTEE of this ESTATE.

I hereby certify that this is a true copy from the records of the Bureau of Conveyances, as 99-193279.

M. Pang

Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii

DEC - 7 1999
@10:00

Reserved for Recording Information

Reserved for Recording Information

After recording, return by mail ☐ or pick-up ☐

Document contains pages

JOSEPH PUNILEI MANINI, SR.
P.O. BOX 690201
Makaweli , Kauai Hi 96769
4833 - B Menehune Rd.

Phone : (808) 338 - 1538

TITLE DEED : KULEANA LANDS OF THE PUNI , ESTATE .

Joseph Punilei Manini, Sr.

JOSEPH PUNILEI MANINI , SR.

Heir at law by descent , Executor and Grantor of the PUNI , Estate , a conveyance through inheritance .

Know all men by these presents that I, Joseph Punilei Manini , Sr., Executor and Grantor of the PUNI , estate , for and in consideration of the receipt of the sum of one hundred dollars from Joseph Punilei Manini , Sr., of Waimea , Island of Puni name Kauai , therefore I, have sold and conveyed absolutely this entire estate of Puni, to Joseph Punilei Manini , Sr. , Heir at Law and Grantee by this instrument .

Continued :

Continued :

GRANTEE(S) ADDRESS :

JOSEPH PUNILEI MANINI , SR.
P. O. Box 690201
Makaweli , Kauai Hi 96769
4833 - B Menehune Rd.

Phone (808) 338 - 1538

TAX MAP KEY # - The Polynesian
Triangle of the Pacific Ocean .

TITLE DEED

KULEANA LANDS OF THE PUNI , ESTATE

Privately owned properties with survey , and two Title Deeds , mark the estate of PUNI , the Ruling Chief , dress with the Red feather cloak and head dress , the executive of the Moku's or Islands of PUNI , situate in the Polynesian Triangle of the Pacific Ocean (See : Exhibit "E"- plate 1 and 2 pages 3 & 4) " Na Kaplau I Laka " these two appliqued designed instruments domesticated 1839 A. D. by KAMALU , at Lahainaluna Maui .

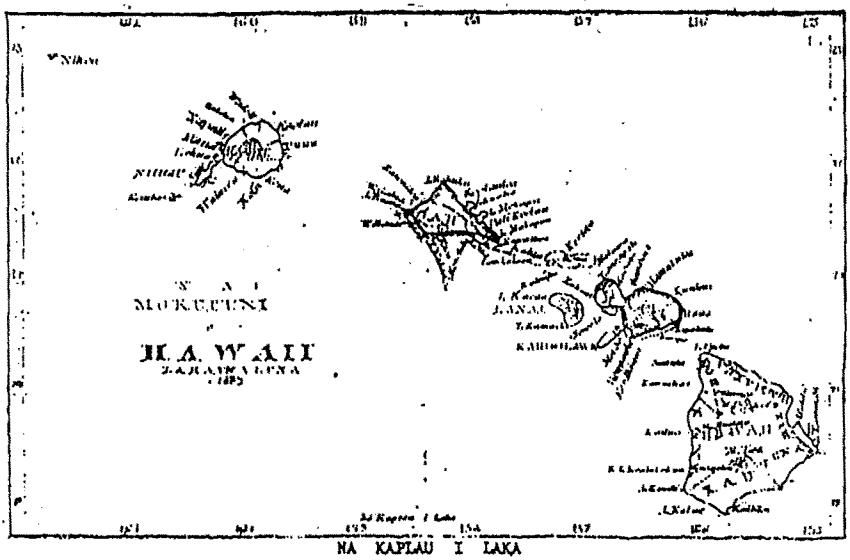
Continued :

NA MOKU PUNI

THE PRIVATE SURVEY ESTATE OF PUNI

THE CAPITOL: OF THE POLYNESIAN TRIANGLE OF THE PACIFIC OCEAN

TITLE DEED : DOCUMENTED AT LAHAINALUNA MAUI , 1839 A. D. BY KAMALU



NA KAPLAU I LAKA

These appliqued designed instruments domesticated , 1839 A. D. by KAMALU, TWO TITLE DEEDS , mark the Polynesian Triangle , Private survey Estate of PUNI , documented by these two Maps , plate 1 and 2 , the executive unconquered nor overthrown , there's no record recorded of a submission of this Empire , The Sovereign Nation of PUNI , the Capitol of the Kanaka Maoli Natives of the Polynesian Triangle of the Pacific Ocean.

(Exhibit "E" Plate "1") Continued ;

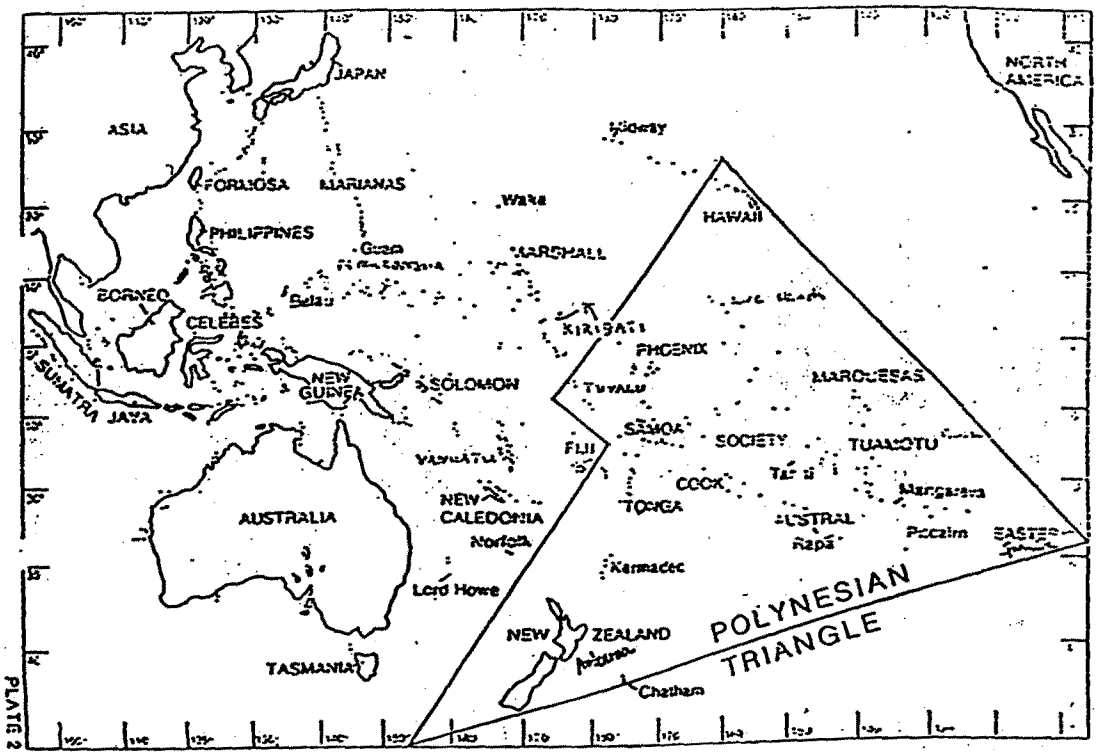


PLATE 2

TITLE DEED : THE PRIVATE SURVEY ESTATE OF PUNI , THE POLYNESIAN TRIANGLE OF THE PACIFIC OCEAN , HOME OF THE KANAKA MAOLI NATIVES , A SOVEREIGN NATION OF PUNI .

(Exhibit "E" Plate "2")

Continued :

This record recorded and compared in the Law Library of Congress , statutes at large of the United States of America, the session of the 60th Congress , 1907 : 1909 , Vol. 35 part 2 (AE 2 - 111) , statute No. 2209 : 2210 , proclamation No. 827 dated : December 4, 1908 by Theodore Roosevelt , president of the United States , In pertinent part : Whereas , by joint resolution ,"to provide for annexing the Hawaiian Islands to the United States", approved July 7, 1898 , the session by the government of the Republic of Hawaii to the United States of the absolute Fee and ownership of all public , government ,"or" CROWN LANDS .

The United States of America by it's Congress and it's president Theodore Roosevelt , Only accepted the CROWN LANDS of the KAMEHAMEHA ESTATE , in the joint resolution to provide for annexing the Hawaiian Islands , dated : December 4, 1908 .
(See : Exhibit "G" pages 8 to 15)

According to History , Kamehameha didnot conquer nor overthrow the " Executor of Polynesia ", the Ruling Chief of the Kanaka Maoli Nation of PUNI , the Chief with the red feather cloak and head dress , last Ruling Chief Kaumualii , the executor of Polynesia and also Ruling Chief of the nine Islands or Moku's of PUNI , Capitol and home of the Kanaka Maoli Natives of Polynesia . (See: Exhibit "E" plate 1 & 2 pages 3 & 4)

Continued :

Continued :

Therefore according to international law, conquest is defined by Bouvier's Law Dictionary 1914 edition , as the taking of the sovereignty of a country by force of arms , exercised by an independent power which reduces the vanquished to the submission of the independent power's empire .

For further insight into understanding what constitutes a conquest , look to the definition of the following words .

Independent Power — The right ability , or faculty which is not subject to Control , restriction, modification, or limitation from any given outside source.

In view of the aforementioned , one could conclude that it takes an Unconquered Nation to conquer another Nation , remember Kamehameha was not a Nation , nor did He Control and Empire .

Furthermore , Kamehameha didnot Conquer the Nation of PUNI, PUNI , " POO " or executive of the Kanaka Maoli Natives of Polynesia , Kamehameha , was merely acting in his own self-interest, with no Power , no Authority, and no Jurisdiction to constitute an Overthrow or Conquest , therefore any and all properties acquired through the Kamehameha estate as CROWN LANDS is Null and Void, for this estate does not legally exist .

The Nation of the United States of America , by it's Congress and it's President , is with full authority to rectify

 Continued:

Continued :

this Wrong that they have imposed on the Kanaka Maoli Natives of Polynesia and their Sovereign Nation of Puni , by returning all rights and possession of ownership to their properties , to these rightful owners , as documented within this instrument .

Record recorded and compared this 22nd day of October 1999 , " Puni " , Grantor ,deceased executive of the Moku's or Islands of Puni , private ancestral estate as documented in these two Title Deeds , recorded in Exhibit "E" plate 1 and 2 , situate in the Polynesian Triangle of the Pacific Ocean . (See: pages 3 and 4)

" Punilei Manini " , deceased ancestral descendant of Puni, Punilei , translated to English means " CROWN PUNI " , Heir at law and executive to this private ancestral estate of Puni , by descent , as the Grantor of the entire estate of Puni , through inheritance .

Joseph Punilei Manini , Sr. , ancestral descendant of Puni and Punilei Manini , by descent , he is the " CROWN PUNI " of this dispensation , as Heir at law , executor and Grantor to the entire private ancestral estate of Puni , The Polynesian Triangle of the Pacific Ocean and by virtue of right to ownership and possession of this entire private ancestral estate through a conveyance by inheritance , and demands his claims of rights as the legal owner to all estates , including estates in trust , within this survey tract, and area of land , water , etc. , within the Polynesian Triangle of the Pacific Ocean as recorded in this instrument .

THE

STATUTES AT LARGE

OF THE

UNITED STATES OF AMERICA

FROM

DECEMBER, 1907, TO MARCH, 1909

CONCURRENT RESOLUTIONS OF THE TWO HOUSES OF CONGRESS
AND
RECENT TREATIES, CONVENTIONS, AND EXECUTIVE PROCLAMATIONS

EDITED, PRINTED, AND PUBLISHED BY AUTHORITY OF CONGRESS
UNDER THE DIRECTION OF THE SECRETARY OF STATE

VOL. XXXV

IN TWO PARTS

PART 1—Public Acts and Resolutions
PART 2—Private Acts and Resolution, Concurrent Resolutions, Treaties, and Proclamations

---

PART 2

PROPERTY OF THE HOUSE LIBRARY UNITED STATES

WASHINGTON
GOVERNMENT PRINTING OFFICE
1909

DEC 8 1981
16486

UNIV. OF HAWAII
LIBRARY
MAR 19 1982
GOV'T DOCUMENTS
COLLECTION

PRESIDENTIAL PROCLAMATIONS CONCERNING PUBLIC LANDS:

January 24, 1791 - March 19, 1936

Numerical List and Index

by Anne R. Ashmore

1981
185 p

Library of Congress
LAW LIBRARY
American-British Law Division
European Law Division
Far Eastern Law Division
Hispanic Law Division
Near Eastern and African Law Division

24

		Proc. No.*
35 Stat. 2189	Boundary, Canada, June 15, 1908	810
35 Stat. 2190	Gila National Forest, June 18, 1908	811
35 Stat. 2191	Datil National Forest, June 18, 1908	812
35 Stat. 2192	Grand Canyon National Game Preserve, June 23, 1908	814
35 Stat. 2193	Uinta National Forest, July 1, 1908	815
35 Stat. 2194	Crook National Forest, July 1, 1908	816
35 Stat. 2195	Klamath National Forest, July 2, 1908	817
35 Stat. 2196	Coconino & Kaibab National Forests, July 2, 1908	818
35 Stat. 2197	Puerto Rico, public land, Aug. 4, 1908	819
35 Stat. 2203	Rosebud Indian Reservation, Aug. 24, 1908	820
35 Stat. 2205	Tumacacori National Monument, Sept. 15, 1908	821
35 Stat. 2206	Ocala National Forest, Nov. 24, 1908	823
35 Stat. 2207	Dakota National Forest, Nov. 24, 1908	824
35 Stat. 2208	Choctawhatchee National Forest, Nov. 27, 1908	825
35 Stat. 2208	Lighthouse, Haw., Dec. 4, 1908	826
35 Stat. 2209	Lighthouse, Haw., Dec. 4, 1908	827
35 Stat. 2211	Lighthouse, Haw., Dec. 4, 1908	828
35 Stat. 2212	Lighthouse, Haw., Dec. 4, 1908	829
35 Stat. 2213	Lighthouse, Haw., Dec. 4, 1908	830
35 Stat. 2214	Wheeler National Monument, Dec. 7, 1908	831
35 Stat. 2215	Humboldt National Forest, Jan. 20, 1909	832
35 Stat. 2216	Hoapa National Forest, Jan. 21, 1909	833
35 Stat. 2217	Cleveland National Forest, Jan. 26, 1909	834
35 Stat. 2218	Pecos National Forest, Jan. 28, 1909	835
35 Stat. 2218	Prescott National Forest, Feb. 1, 1909	836
35 Stat. 2219	Tonto National Forest, Feb. 10, 1909	837
35 Stat. 2220	Marquette National Forest, Feb. 10, 1909	838
35 Stat. 2220	Nevada National Forest, Feb. 10, 1909	839
35 Stat. 2221	Dixie National Forest, Feb. 10, 1909	840
35 Stat. 2222	Michigan National Forest, Feb. 11, 1909	841
35 Stat. 2223	Klamath National Forest, Feb. 13, 1909	847
35 Stat. 2223	Superior National Forest, Feb. 13, 1909	848
35 Stat. 2224	Gila National Forest, Feb. 15, 1909	843
35 Stat. 2225	Black Hills National Forest, Feb. 15, 1909	844
35 Stat. 2226	Sioux National Forest, Feb. 15, 1909	845
35 Stat. 2226	Tongass National Forest, Feb. 16, 1909	846
35 Stat. 2228	Toiyabe National Forest, Feb. 20, 1909	849
35 Stat. 2230	Datil National Forest, Feb. 23, 1909	851
35 Stat. 2231	Chugach National Forest, Feb. 23, 1909	852
35 Stat. 2232	Modoc National Forest, Feb. 25, 1909	853
35 Stat. 2233	Ozark National Forest, Feb. 25, 1909	854
35 Stat. 2234	California National Forest, Feb. 25, 1909	855
35 Stat. 2235	Arkansas National Forest, Feb. 27, 1909	857
35 Stat. 2235	Mono National Forest, Mar. 2, 1909	858
35 Stat. 2236	Sitgreaves National Forest, Mar. 2, 1909	859
35 Stat. 2238	Lincoln National Forest, Mar. 2, 1909	860
35 Stat. 2238	Shasta National Forest, Mar. 2, 1909	861

County of Maui, Territory of Hawaii, be immediately reserved for light-house purposes;

NOW THEREFORE, I, THEODORE ROOSEVELT, President of the United States, by virtue of the authority in me vested, do hereby declare, proclaim, and make known that the following described lot or plat of land be and the same is hereby, subject to such legislative action as the Congress of the United States may take with respect thereto, reserved for light-house purposes, to-wit:— Light-house site.

All of the land, the property of the United States of America, on the island of Puukii (sometimes known as Puuiki) on the south side of the entrance to the harbor variously known as Hana, Pueokahi and Kauiki, in the County of Maui, Territory of Hawaii. Description.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this 4th day of December in the year of our Lord one thousand nine hundred and eight, [SEAL.] and of the Independence of the United States the one hundred and thirty-third.

THEODORE ROOSEVELT

By the President:
ALVEY A. ADEE
Acting Secretary of State.

A PROCLAMATION.

December 4, 1908.

WHEREAS, by joint resolution "to provide for annexing the Hawaiian Islands to the United States", approved July 7, 1898, the cession by the government of the Republic of Hawaii to the United States of America, of all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and the transfer to the United States of 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, was duly accepted, ratified, and confirmed, and the said Hawaiian Islands and their dependencies annexed as a part of the territory of the United States, and made subject to the sovereign dominion thereof, and all and singular the property and rights hereinbefore mentioned vested in the United States of America; Hawaiian Islands. Lands on Kauai Island reserved for light-house purposes. Preamble. Vol. 30, p. 750.

AND WHEREAS, it was further provided in said resolution that 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;

AND WHEREAS, it is deemed necessary in the public interests that a certain parcel of land situated at Lae o Kokole, District of Waimea, in the Island of Kauai, Territory of Hawaii, be immediately reserved for light-house purposes; Lae o Kokole, district of Waimea.

NOW THEREFORE, I, THEODORE ROOSEVELT, President of the United States, by virtue of the authority in me vested do hereby declare, proclaim, and make known that the following described lot or plot of land be and the same is hereby, subject to such legislative action as the Congress of the United States may take with respect thereto, reserved for light-house purposes, to-wit:— Light-house site.

Light-House site.

Beginning at a point marked by a one-inch capped galvanized iron pipe, whose azimuth and distance from the Hawaii Territorial Gov- Description.

ernment Survey triangulation station "Kanaloa" are respectively 100° 25' and 7464.1 feet, and running by true azimuths and distances as follows:

1. 295° 5' 376.95 ft. to a point marked by a 1" gal. iron pipe
2. 25° 5' 439.0 " " " " " " " " " "
3. 25° 5' 202.2 " more or less to a point on the seashore
4. 115° 5' 376.95 " along the seashore to a point on the seashore.
5. 205° 5' 197.8 " more or less to a point marked by a 1" gal. iron pipe.
6. 205° 5' 443.4 " to the point of beginning;

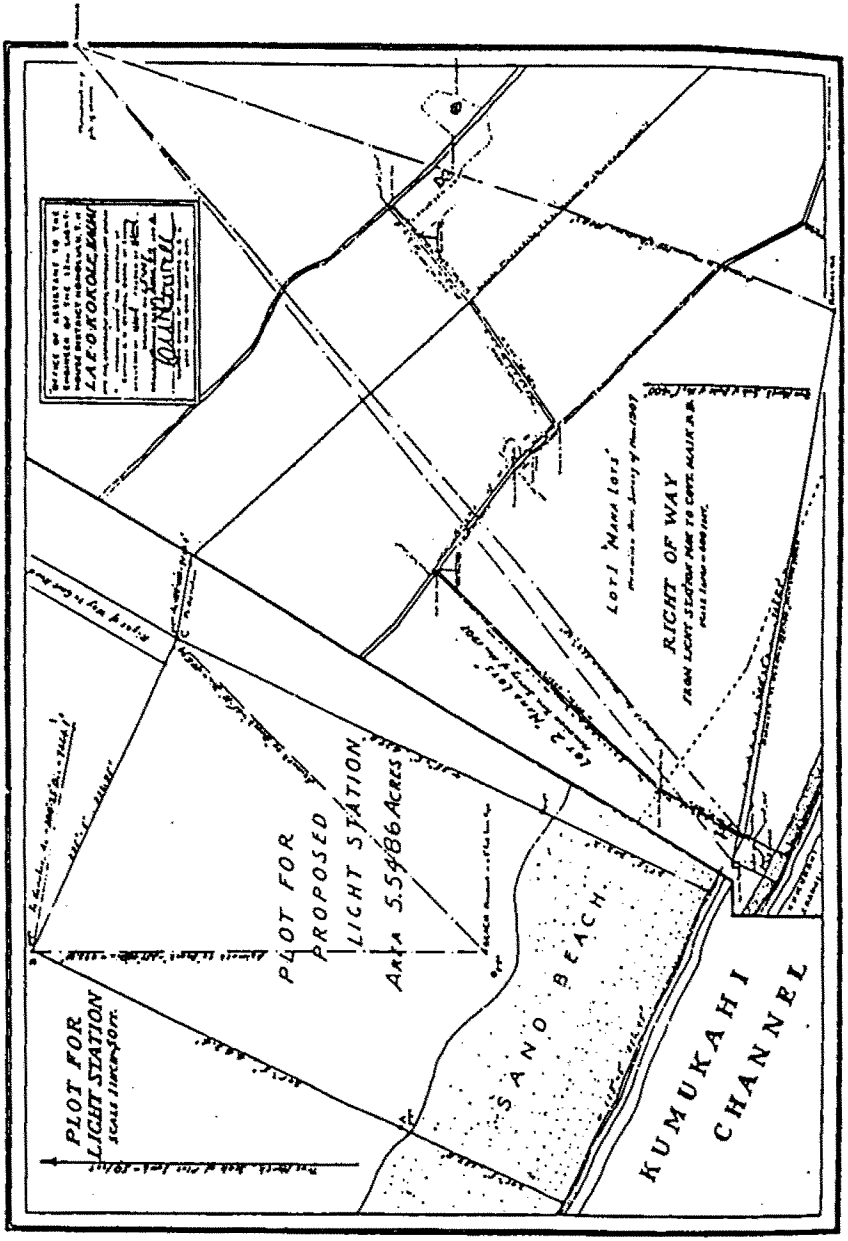
Containing an area of 5.5485 acres more or less.

Right of Way to Government Main Road.

Right of way to Government main road.

Beginning at the northeast corner of the light station plot, which corner is marked by a one-inch capped galvanized iron pipe whose azimuth and distance from the Hawaiian Territorial Government Survey triangulation station "Kanaloa" are respectively 99° 40', and 7100.0 feet and running by true azimuths and distances as follows:

1. 115° 8' 30.11 ft. along light station plot to a point
2. 208° 19' 1264.6 " to extreme southern point of "Lot 2" of the "Mana Lots" of Hawaiian Territorial Survey of Nov. 1907, said point being marked by a galvanized iron pipe.
3. 223° 20' 4086.1 " along above-mentioned "Lot 2" to its extreme eastern point, said point being marked by a galvanized iron pipe
4. 216° 18' 50.0 " across the "Road Reserve" of Hawaiian Territorial Survey of above-mentioned lots to a point.
5. 306° 18' 1710.0 " to a point.
6. 314° 41' 339.8 " " " ".
7. 317° 24' 452.27 " " " "
8. 234° 50' 1966.06 " through swamp to a point.
9. 228° 20' 1601.4 " to a point.
10. 318° 20' 50.0 " along Government main road to a point marked by a galvanized iron pipe
11. 48° 20' 1604.2 " to a point marked by a galvanized iron pipe
12. 54° 50' 2012.8 " through swamp to a point marked by a cross on a stone on the northeast boundary of "Lot 1" of the previously mentioned "Mana Lots"
13. 137° 24' 495.0 " along boundary of "Lot 1" to a point marked by a cross on a stone
14. 134° 41' 335.0 " along boundary of "Lot 1" to a point marked by a cross on a stone.
15. 126° 18' 1676.0 " along boundary of "Lot 1" to a point marked by a galvanized iron pipe, said point being extreme north corner of "Lot 1".
16. 43° 20' 4085.6 " along "Lot 1" to a point marked by a galvanized iron pipe, said point being extreme western corner of "Lot 1"
17. 28° 19' 1264.4 " along Government land to the point of beginning, and containing an area of 10.6998 acres more or less.


PLOT FOR
LIGHT STATION
PLOT FOR
PROPOSED
LIGHT STATION
AREA 5.5486 ACRES
SAND BEACH
KUMUKAHI
CHANNEL
RIGHT OF WAY
LOT 1 'MANA LOTS'
LOT 2 'MANA LOTS'

15.

FAMILY ..... HISTORY

PUNILEI MANINI , a descendant of PUNI , Ruling Chief and executive of the Polynesian Triangle of the Pacific Ocean and also a relative of KAMAIU by descent abt. 1137 A. D. , Island of PUNI name Kauai , as record is recorded and compared in the family history records of the L. D. S. Church .

(See: exhibit "F" page 18)

Keliimauele Kalaupuahiwa (K) alias " Pua "

married

Kapaiki Nawaawai (W)

Son's

Pila Manini (K) alias "Pila"

married

Emare Kahanu (W) alias "Emale"

daughter: Kaaua Pila Manini (W)

married

Nicholas Manini (K)

no dependant children

Son

Keliimauole Manini (K)

married

Malaea Wahapaa (W) alias Liliha

Son

Punilei Manini (K) alias "Punilei"

married

Kaualoku Uiha (W)

Continued :

Son

Pinehaka Punilei Manini

married

Leimomi Makuaole

Son

Joseph Punilei Manini, Sr. (K) third cousin by descent to : Kaaua Pila Manini (W)

married

Beverly Ann Curtis

eight dependant children

Emale Pila (W) alias Emare Kahanu (W) (maiden name)

second husband

married

Solomona Nawaalaau (K) half-brother to Zakaria Lae (K)

no dependant children in this marriage

FAMILY HISTORY : Recorded and compared this 30th day of July 1999 , by Joseph Punilei Manini , Sr. Heir at law and executive to this estate by descent , truly and correctly to the best of my ability .

4833 - B Menehune Road Waimea , Kauai Phone (808) 338 - 1538

(Exhibit "F")

KAMALOLO

STATE: HAWAII — AS OF MAR 1973 — PAGE 423

NAME	FATHER / MOTHER OR SPOUSE OR RELATIVE				EVENT DATE	COUNTY, TOWN, PARISH	B	C	S	SOURCE FILM	SOURCE ITEM
KAMALOLO											
KAMALOLO	KAUALAU	M	W		22SEP1836	HAWAII, KIPI			31MAY1888MA	0725209	30
KAMALOLO	KAILOILOI	U	N		1838	MAUI, OF			CLEARED	0140177	22
KAMALOLO 3		F	B		ABT. 1845	HAWAII, N. KONALO	24APR1922HA	PRE-1970	PRE-1970	0178244	FILM
SPOUSE: KEKUAIUAHEA-OKAKEHAKEHAK/											
KAMALOLO 3	RELATIVE: ANIONA KAUKAU/	F	B		ABT. 1870	HAWAII, VAIPIO	12JUL1920HA	PRE-1970	PRE-1970	0178143	FILM
KAMALOLO AUWAE 3		F	B		ABT. 1847	MAUI, OF LAHAINA	07APR1925HA	PRE-1970	PRE-1970	0178145	FILM
RELATIVE: MRS. MALEKA KURODA/											
KAMALOOKUA 3		M	B		ABT. 1853	OF MAUI	07MAY1943HA	PRE-1970	PRE-1970	0178150	FILM
RELATIVE: WILLIAM LINDSEY/											
KAMALOOHUA 3		M	B		ABT. 1815		02MAR1920HA	PRE-1970	PRE-1970	0178143	FILM
RELATIVE: HAWAIIAN MISSIONA/											
KAMALU 3	RELATIVE: ROBERT PLUNKETT/	M	B				02FEB1915SL	PRE-1970	PRE-1970	0183401	FILM
KAMALU 3	RELATIVE: PUNILEI MANINI/	F	B		ABT. 1837	KAUAI	11DEC1922HA	PRE-1970	PRE-1970	0178144	FILM
KAMALU 3	SPOUSE: KIMO ALAPAI/	F	B		ABT. 1851	NIIHAU	27MAR1920HA	02JUN1920HA	PRE-1970	0178144	FILM
KAMALU 3	SPOUSE: KAUILANI/	M	B		ABT. 1853	NIIHAU	22MAR1920HA	02JUN1920HA	PRE-1970	0178144	FILM
KAMALU 3	SPOUSE: PAPAPA NEAUWEKAHA/	F	B		ABT. 1836	HAWAII, PUNA	14FEB1920HA	02APR1920HA	PRE-1970	0178144	FILM
KAMALU 3	RELATIVE: MARY PALAKIKO/	F	B		ABT. 1839	KAILUA	25NOV1947HA	PRE-1970	PRE-1970	0178150	FILM
KAMALU	PALSHUA	M	W		25FEB1852	HONOLULU			03JUL1897HA	0630064	3
KAMALU	PALSHUA	M	W		21JUL1852	HONOLULU,HONOLULU			07AUG1852HA	0612850	48
KAMALU	KEOLAMAU/PEKELO	F	B		21AUG1862	HONOLULU,KAPUUKOLO	04MAR1927HA	02APR1927HA	17JUN1927HA	0630081	3
KAMALU	WAUELU	M	W		08MAR1863	MAUI,WAILUKU			26MAR1927HA	0630081	3
KAMALU 3		F	B		ABT. 1876	OF MAUI	28MAY1921HA	PRE-1970	PRE-1970	0178144	FILM
RELATIVE: KAHUKAGAWA KUMIP LEKIA/											
KAMALU	MAKAKA	M	W		21JAN1885	MAUI,WAILUKU			26MAR1927HA	0630051	1048
KAMALU 3	RELATIVE: MARY PALAKIKO/	M	B		ABT. 1886	WAILUA	25NOV1947HA	PRE-1970	PRE-1970	0178150	FILM
KAMALU KALUA 3		F	B		1894	MAUI, LAHAINA	05DEC1921HA	PRE-1970	PRE-1970	0178143	FILM
RELATIVE: JAMES K. KOANUI KALEO/											
KAMALU		F	B		1898	MAUI	04FEB1888HA	16MAR1888HA		0718260	62
KAMALU	BARAMBA	M	W		03MAY1850	HAWAII			27SEP1883JA	0518331	4722
KAMALU	J. U. PUNAKOA/KALAKAALANI	F	B		18OCT1852	HAWAII,PUNA DISTRICT	CLEARED	CLEARED	11JUL1887HA	0614284	10
KAMALU	ANAMIKAULE	M	W		4UG1872	MAUI,WAILUKU			24MAR1920HA	0630051	1048
KAMALU	ISAIA/POOKULOU	F	B		03SEP1873	HONOLULU,KAHLAA	CLEARED	CLEARED	CLEARED	0520031	2220
KAMALU	KONAU	M	W		21SEP1877	HAWAII			23SEP1883JA	0518331	1122
KAMALU WAHINE		F	B		10MAR1883	HAWAII,KAO	25JUL1888HA	20MAR1888HA		0802765	60
KAMALUHKA (MAKAKOA) 3											
RELATIVE: JOHN KINILAU PALTMOB/											
KAMALUHIA 3	RELATIVE: LOUIS KILAUKNO/	M	B		ABT. 1837	OF KAUAI	09MAR1921HA	PRE-1970	PRE-1970	0178143	FILM
KAMALUHIA		M	B		ABT. 1885	KAUAI, WAIMEA	02DEC1910HA	PRE-1970	PRE-1970	0178143	FILM
KAMALUHA		M	B		1830	HAWAII, KONA	24OCT1931HA	07FEB1932HA		0760789	FILM
KAMALUHA	KAILI	M	W		10MAR1831	HAWAII,KAWAIHAE			25FEB1888HA	0718451	53
KAMALUOHUA 3	RELATIVE: JOANE MAKAKAO/	M	B				16MAY1888HA	PRE-1970	PRE-1970	0177724	FILM
KAMALUOHUA 3	RELATIVE: EMMA K. LEWIS/	M	B		ABT. 1890		20APR1920HA	PRE-1970	PRE-1970	0178143	FILM
KAMALUOHUA 43	KAPU	M	W		K14893	MAUI, OF			10OCT1888HA	0714074	0015
KAMALUOHUA 3	LUAKONA/	F	B		ABT. 1884		16JAN1922HA	PRE-1970	PRE-1970	0178143	FILM
KAMALUOHUA 3	KUNIKANA/	F	B		ABT. 1889		17JAN1922HA	PRE-1970	PRE-1970	0178143	FILM
KAMALUOHUA 43	KUNIKANA/KAUAHI	M	B		ABT. 1881		16NOV1915HA	20NOV1915HA	10OCT1888HA	0622451	0032
KAMALUOHUA 43	KAPU	M	W		K15857		20SEP1888HA		04DEC1888HA	0622451	0032
KAMALUOHUA	KAPU	M	W		1505	MAUI			CLEARED	0140100	0038
KAMALUOKALANI 3		F	B		ABT. 1742	MAUI, LAHAINA	23JAN1948HA	PRE-1970	PRE-1970	0178150	FILM
RELATIVE: SEO. KAUNANE KAMUOHONA OPUNUI/											
KAMALUPAIKA 3	KUPUIWAHINE/	M	B		1 1874	MAUI, WAILUKU	04APR1922HA	PRE-1970	PRE-1970	0178148	FILM
KAMAKA 3	RELATIVE: ELIZA KEALOHA/	M	B		04NOV1875	OAHU, HONOLULU	21MAY1941HA	PRE-1970	PRE-1970	0178148	FILM
KAMAKAINAU 3		F	B		21NOV1872		21NOV1872HA	PRE-1970	PRE-1970	0178148	FILM
RELATIVE: EMMA K. L. ROSSMAN/											
KAMAKAKAUA		M	B		1815	HAWAII,WAIPIO	CLEARED	CLEARED		0101564	55
KAMAKAKAUA	KEAKA	M	W		04NOV1837	HAWAII,KAWAIHAE			13JUN1888HA	0722085	23
KAMAKALU 43		M	W		1802				17JAN1910HA		
KOAPILI/KALAKUA OR KAHCIENIALIE											
KAMAKANE 43	SPOUSE: KALOOUNI/	F	B		ABT. 1872	OF	11JUN1925HA	20NOV1921HA		0873047	0032

ENTRY ALTERED FROM SOURCE: 1:=RELATIVES 2:=BIRTH 3:=MARRIAGE 4:=DEATH 5:=BURIAL 6:=CHRISTENING 7:=LIST NAME 8:=SEX 9:=BIRTH
IN SOURCE; ETC. SYMBOLS IN DESTRUCTIONS. 10:=DEATH 11:=CHRISTENING 12:=LIST NAME 13:=SEX 14:=BIRTH

Exhibit "F"

HAWAII ALL-PURPOSE ACKNOWLEDGMENT

State of Hawaii
City
County of Honolulu } ss.

On this 7 (Day) day of December (Month), 19 99 (Year)

before me personally appeared

(1) Joseph Punili Manini, Sr
Joseph P. Manini Sr (Name of Signer)

(2) and _____ (Name of Signer),

to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

John Cordon (Signature of Notary Public)

My commission expires: 9-23-2001

OPTIONAL

Though the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Document and Signer

Document Title/Type: _____ Date: _____ No. Pgs.: _____

Signer(s) Other Than Named Above: _____

Signer's Capacity: _____ Representing: _____

RIGHT THUMBPRINT OF SIGNER #1	RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here	Top of thumb here

© 1993 National Notary Association • 8236 Remmet Ave., P.O. Box 7184 • Canoga Park, CA 91309-7184 Prod. No. 5921 Reorder: Call Toll-Free 1-800-876-6827

To: OHA Trustee

FROM: Leiliwin Kalei Mahuiki

RE: Segawa/Ching vs. Kaheleiki et al,

I will open by stating for the record my genealogy.

"O wai na makua?"

Kapae (K) dwelt with Kaleone (W)
and Laa (K) was born
Kana Nahale'elua (K) dwelt with Haha (W)
and Rachel Nahale'elua Ilalaole 'O Kamehameha was born.
Laa (K) dwelt with Nahale'elua (W)
and Jeremiah Mahuiki was born.
Sam Pa (K) from Kahilikai dwelt with Lucy Kai (W) of Hanalei
and Leiliwin Kalei Pa was born.
Jeremiah Mahuiki married Leiliwin Kalei Pa
and had sixteen chilren, I am their fourteenth child and
I carry my mothers mane Leiliwin Kalei Mahuiki(Denson).

I have married David Denson and have three children,
Leiliwin kalei, Kapuailikopumehana'O'nalani, and
Kamana-Olana.

With this letter I have enclosed a packet containing as much factual information as possible to help you under--stand our case.Our greatest hope is that OHA can find some way to help us save our home, my grandmothers' home, and land that we have had since King Kamehameha the third gave it to my ancestors during the mahele.

After my tutu's death Mike Ching began a process he started years before her death. He signed our cousin,S.Segawa to a contracting assuring him the ability to buy our lands if Segawa could get title, she did not and ching had her quit claim to him so he could force the land to auction. At auction we will not get much for our land and most heirs will see nothing, except another peice of land taken away.

Since I was a young girl I have watched foreigners, the state, and gov't take away one kanaka maoli's land after another and it is not right. They drag us to court into thei arena and watch as we are consumed!

Somewhere in Febuary 1997 we were dragged into court. We sought the Help of Native Hawiian Legal corp(NHLC).Our Lawyer Arnold Lum never came to our first hearing resulting in default judgements against ohana not represented and a summary judgement,which in my opinion was wrong, because there were many errors in the title report and genealogy. (some family was not included, others interests were wrong like my Uncle Ezera.)

On questioning Lum as to how to correct errors in the title report, we were informed summary judgement had been made and we would have to live with the errors,unbeleivable? We were led to beleive there was nothing he could do. Upon pressuring Lum to do SOMETHING he asked the court to **partition in kind** a 10,000 sq/ft lot and let us pay market value for any interst missing, the court rejected Lums request.With auction almost certain my husband went to OHA to ask for guidance and assistance for my Uncle Ezera pa and Myself.
They met with the trustees at Anahola Clubhouse and after being well received went the next day to again speak to the Trustees' at the Sunspree resort. The trustees' indicated that they would try to help ....Gladys Brandt and Clayton Hee spoke with the Judge(masuoka) and the Ching family, their reaction was that Ching would not negotiate taking our ancestral lands, but judge Masuoka alowed us some more time because of Gladys Brandt and we changed Lawyers. You see Arnold was representing my Uncle and some other family in what now was a clear conflict of interest. He submitted a bill which is in this packet for 6,710 dollars?? IT has since been reduced to 400 dollars.

After the election we lost all contact with the people at OHA. The Honolulu Star Bulletin wrote a story that we thought OHA should see so we faxed it to you. Only Mililani Trask replied by Fax, no other response or word from OHA since?

Meanwhile, Harold Bronstein replaces Arnold Lum as our atty. After looking at our case he immediately asks why we did not question the title report. Good Question? After two years Harold has now petitioned the court to amend or dismiss the title report based on errors and inaccuracys.Now before the judge on March 24,1999 is whether to amend or dismiss summary judgement,also a petition by ching against our motion and a MOTION TO AUCTION.

Please if OHA can find no way to help surely we will lose all our lands. Mrs Pa has put together several proposals that would help us save this land I ask you please give them consideration.Lastly if this court, the same court that overthrew our gov't and imprisoned our queen pushes us aside we surely will not yield and will not harm but will defend ourselves against such forces that prey on the weak.

I Lei Mahuiki would like to thank you for you time and consideration in this matter. I beleive that OHA can and will help. Please if you could write to the judge and let him know you are trying to see what could be done? Please reply before the 24th.

Ezera and J.Pa
826-2545

Lei & David Mahuiki
Po Box 1659 Kapaa
HI 96746
808 245 9441

Sincerely,

HAROLD BRONSTEIN #4320
P. O. Box 3064
Lihue, Hawaii 96766
Telephone: 245-1997

Attorney for Defendant
Ezera Pa

'99 MAR -5 P3:56

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

SHARON M. K. SEGAWA, Trustee of the Sharon M. K. Segawa Revocable Living Trust under unrecorded Trust Agreement dated November 15, 1995, and ERNEST M. KAI, Plaintiffs, vs. S. B. KAHELEIKI, also known as S. BEN KAHELEIKI and BENJAMIN KAHELEIKI, et al. Defendants.	CIVIL NO. 97-0273 DEFENDANT EZERA PA'S MOTION TO RECONSIDER AND/OR ALTER OR AMEND AND/OR SET ASIDE THE ORDER GRANTING PLAINTIFFS' SUMMARY JUDGMENT MOTION RE TITLE AND PARTITION FILED MARCH 18, 1998; MEMORANDUM IN SUPPORT OF MOTION; EXHIBITS "A" - "G"; AFFIDAVIT OF EZERA KAI PA; AFFIDAVIT OF HAROLD BRONSTEIN; NOTICE OF HEARING; CERTIFICATE OF SERVICE Date: March 25, 1999 Time: 1:00 p.m. Judge: George M. Masuoka

DEFENDANT EZERA PA'S MOTION TO RECONSIDER AND/OR ALTER OR AMEND AND/OR SET ASIDE THE ORDER GRANTING PLAINTIFFS' SUMMARY JUDGMENT MOTION RE TITLE AND PARTITION FILED MARCH 18, 1998

Defendant, Ezera Pa, moves this Court pursuant to Rule 60(1)(5) and (6) of the Hawaii Rules of Civil Procedure and the Court's inherent equitable power to reconsider, alter or amend and/or set aside the Order Granting Plaintiffs' Summary Judgment Motion Re Title and Partition, filed March 18, 1998.

DATED: Lihue, Hawaii, March 5, 1999.

HAROLD BRONSTEIN
Attorney for Defendant
Ezera Pa

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

SHARON M. K. SEGAWA, Trustee of the Sharon M. K. Segawa Revocable Living Trust under unrecorded Trust Agreement dated November 15, 1995, and ERNEST M. KAI, Plaintiffs, vs. S. B. KAHELEIKI, also known as S. BEN KAHELEIKI and BENJAMIN KAHELEIKI, et al. Defendants.	CIVIL NO. 97-0273 MEMORANDUM IN SUPPORT OF MOTION;

MEMORANDUM IN SUPPORT OF MOTION

On September 10, 1997, Sharon M. K. Segawa, Trustee and Ernest M. Kai filed a Complaint pursuant to "Haw. Rev. Stat. Chapter 669 to establish their title to an undivided interest in, and pursuant to Haw. Rev. Stat. Chapter 668 for an accounting and to partition, TMK (4) 5-5-6-15, being all of Royal Patent Grant 2715, except that portion conveyed by S. Ben Kaheleiki and Sarah K. Werner to the Territory of Hawaii by Deed dated January 5, 1931, recorded in Book 1057, Page 492. (Complaint, at page 4).[1]

[1] A Stipulation between the Plaintiffs and Defendants Michael G. Ching and Jennie P. Ching Re Substitution of Parties was filed on October 15, 1998. Pursuant to the Stipulation Defendant Michael G. Ching was substituted for the Plaintiff Sharon M. K. Segawa, Trustee, and the Defendant Jennie P. Ching was substituted for the Plaintiff Ernest M. Kai.

Plaintiffs' Summary Judgment Motion Re Title and Partition was filed on January 21, 1998. The Memorandum in Support of the Motion included the Affidavit of Colleen Y. Uyechi, a legal assistant to Plaintiffs' attorney. Uyechi's Affidavit authenticated as true and correct copies of the exhibits attached to the Motion For Summary Judgment, including:

1) Exhibit 1, a title report as of August 15, 1996, issued by Title Guaranty of Hawaii, Incorporated, (Exhibit "A"), and

2) Exhibit 2, an unrecorded copy of a Quitclaim Deed dated November 6, 1997 from the President of the Church of Jesus Christ of Latter Day Saints, a Utah corporation to Jennie P. Ching (Exhibit "C").

The Memorandum in Support of the Motion as did the Complaint relied upon the statements contained in the title report, and provided no other evidence of title to the property. Moreover, there is absolutely no proof as to how the Plaintiff determined the percentage interest of each individual they considered an owner of an interest in the property. An Order Granting Plaintiffs' Summary Judgment Motion Re: Title and Partition was filed on March 18, 1998. (Exhibit "B").

SUMMARY JUDGMENT

The moving party has the initial burden of identifying those portions of the record demonstrating the absence of a genuine issue of material fact. Dunlea v. Dappen, 83 Hawaii 28, 37, 924 P.2d

196, 205 (1996). Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 104, 839 P.2d 10, 22, reconsideration denied, 74 Haw. 650, 843 P.2d 144 (1992); see also Hawaii Rules of Civil Procedure (HRCP) Rule 56(c). A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. Maguire v. Hilton Hotels Corp, 79 Hawaii 110, 112, 899 P.2d 393, 395 (1995) (citation omitted). On motion for summary judgment, the evidence is viewed in the light most favorable to the non-moving party. Sate v. Tradewinds Elec. Serv. & Contracting, Inc., 80 Hawaii 218, 222, 908 P.2d 1204, 1208 (1995).

Finally, Rule 56(e) of the Hawaii Rules of Evidence states in part:

> (e) *Form of affidavits; further testimony; defense required.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. (emphasis added).

THE TITLE REPORT

The title report used by the Plaintiffs as their evidence to establish the history of title and ownership of the property is simply incomplete, incorrect and full of hearsay. As to S. B. Kaheleiki, the son of J. H. Kaheleiki the title report indicates as follows:

> By Warranty Deed dated December 4, 1916 recorded in Liber 448 at Page 376, J. H. KAHELEIKI conveyed unto S. B. KAHELEIKI (son) and SARAH KEAWA WERNER (daughter), R. P. No. 2715 containing an area of 1 acre besides other land.
>
> . . .
>
> By Warranty Deed dated January 5, 1931 recorded in Liber 1057 at Page 492, SARAH K. WERNER, widow, and S. BEN KAHELEIKI, widower, conveyed unto the Territory of Hawaii a portion of Grant 2715 containing an area of 1592 square feet required for the widening of the main Government Road through Hanalei.
>
> No further conveyance appears of record by S. BEN KAHELEIKI or under the name of BENJAMIN KAHELEIKI dealing with Royal Patent Grant Number 2715. The records at the Bureau of Health Statistics lists the death of BENJAMIN KAHELEIKI, widower, on October 31, 1931 on Kauai. His estate was not probated nor his heirs-at-law judicially determined. (Emphasis added).
>
> . . .
>
> DAVID NOA KAHELEIKI, a brother of S. BEN KAHELEIKI and SARAH WERNER, died on May 3, 1941 in Hanalei, Kauai. His estate was administered in the Fifth Judicial Circuit Court under Small Estate Number 319, an intestacy. The Petition for Administration was filed therein on May 24, 1941.
>
> . . .
>
> Information shown on the history sheets for Tax Key (4) 5-5-6-15 containing an area of 0.96

> acre obtained from the Real Property Assessment Department, City and County of Honolulu, suggest that the undivided 1/4 interest of S. BEN KAHELEIKI in and to the subject land devolved to his sister, SARAH K. WERNER and brother, DAVID NOA KAHELEIKI. The owners of the subject land as noted on the history sheet "route slip" dated December 23, 1942, are: GABRIEL K. KAHALEIKI, 6/40 interest, J. M. IRVINE, 6/40 interest; MRS. JULIA MILLER, 6/40 interest; MRS. RITA KAAI, 6/40 interest; ANTHONE W. RAMOS, 6/40 interest; DAVID KAHELEIKI, JR., 5/40 interest; ALICE H. KAI, 1/40 interest; LUCY K. PA, 1/40 interest; JOHN KAI, 1/40 interest; ROY KAI, 1/40 interest; SAM KAI, JR., 1/40 interest. Also noted thereon is the following: "David N. Kaheleiki Est. had 1/4 int. in Gr. 2715 Area - 0.96 Ac. But in Prob 319 SE this parcel was not listed in the inventory." (Emphasis added).
>
> (Exhibit "A", at pages 2, 3 and 4).

As to the interest of Gabriel Kaheleiki, the last conveyance recorded as to his interest in the property was on May 14, 1954 from Robert K. Kealoha to Albert Peters.

As to Albert Peters the title report states:

> No conveyance dealing with the subject land appears of record by ALBERT PETERS who died on May 8, 1962 on Kauai. There is no probate of his estate nor a judicial determination of his heirs-at-law. The obituary for ALBERT PETERS appearing in the May 10, 1962 edition of the "Advertiser" newspaper lists his survivors as follows: ESTHER (wife), SPENCER (son), MRS. VERDELLE LUM (daughter), MRS. FLORENCE HASHIMOTO (daughter), MISS AGNES CHUNG (foster daughter), SAMUEL (brother), MRS. CAROLINE SMITH (sister), and grandchildren. The widow of ALBERT PETERS, namely ESTHER PETERS, died on September 19, 1980 on Kauai.
>
> (Exhibit "A", at page 4).

As to the interest of J. M. Irvine the report states:

> No conveyance appears of record dealing with the subject land by J. M. IRVINE who died under the name of JOSEPH MORRISON IRVINE, a widower, on

> February 23, 1955 on Oahu. His estate was not probated nor his heirs-at-law judicially determined. (Emphasis added).
>
> (Exhibit "A", at page 5).

Clearly, the title report relied upon to establish the ownership of the property is not only incomplete, as there is lacking the requisite judicial determination of heirs, but in fact relies heavily upon hearsay in trying to complete the chain of title. Simply put, the Summary Judgment based upon the August 15, 1996 title report must be set aside.

JENNIE P. CHING'S INTEREST IN THE PROPERTY

Plaintiffs' Motion for Summary Judgment Re Title and Partition states in part:

> The evidence establishes, prima facie, that title is vested in the persons named below in the undivided interests appearing opposite their names. Hustace v. Kapuni, 6 Haw. App. 241, 246 n.10, 718 P.2d 1109, 1113 n.10 (1986) (paper title proved by deed, devise, intestate succession). (1)
>
> -- 7,260 sq. ft. (17.30% of whole)[2]
>
> JENNIE P. CHING
>
> (footnote omitted).

The Order filed March 18, 1998 states:

> I. TITLE. IT IS HEREBY ORDERED that Plaintiffs' summary judgment motion re title is granted, and that title to TMK (4) 5-5-6-15, being all of Royal Patent Grant 2715, except that portion conveyed by S. Ben Kaheleiki and Sarah K. Werner to

---

[2] The deed makes reference to a 1/6 interest which would equal 16.67% of the whole, not 17.30% of the whole. (See Exhibit "D").

> the Territory of Hawaii by Deed dated January 5, 1931, recorded in Book 1057, Page 492, is vested in the persons named below in the undivided interests appearing opposite their names:
>
> -- 7,260 sq. ft. (17.30% of whole)
>
> JENNIE P. CHING

The Plaintiffs' prima facie evidence again comes from the title report, as Jennie Ching's interest in the property is purchased from the Church of Jesus Christ of Latter Day Saints by Quitclaim Deed on or about November 6, 1997. (Exhibit "C"). The title report indicates that the Church by Warranty Deed dated February 17, 1902 may have obtained a portion of Royal Patent Grant Number 2715 being 75 feet wide and 96 8/10 feet long from J. H. Kaheleiki and his wife Ukuuku Kaheleiki by gift, but the deed was not recorded until July 20, 1921 in Liber 598 at page 395. (Composite Exhibit "D").[3] The title report also makes clear that four and one half (4½) years prior to the Church recording its deed, J. H. Kaheleiki sold to S. B. Kaheleiki, his son and Sarah Keawa Werner, his daughter, all his interest in Royal Patent No. 2715 containing an area of 1 acre besides other land by Warranty Deed dated December 4, 1916 and recorded on December 6, 1916 in Liber 448 at page 376. There is absolutely no reference to

[3] The deeds attached as composite Exhibits "D" and "E" as recorded are in the Hawaiian language. The Defendant has had the deeds translated and the translated deeds are made a part of composite Exhibits "D" and "E".

the prior deed contained in the deed from Kaheleiki to his children. (Composite Exhibit "E").[3]

It is interesting that the Plaintiffs in their Motion For Summary Judgment make no mention that the 1902 deed from Kaheleiki to the Church was not recorded for over nineteen (19) years. It is also interesting that Plaintiffs in their Motion For Summary Judgment made no mention that prior to the recording of the Deed by the Church in 1921, Kaheleiki sold his lands including Royal Patent 2715 to his son and daughter, which deed was recorded four and one-half (4 1/2) years prior to the Church's Deed. At the very least, summary judgment was inappropriate as to Jennie Ching's interest as there are both questions of fact and law as to the validity of the original 1902 deed to the Church. Accordingly, whether or not Jennie Ching in fact obtained any interest in the property from the Church on November 6, 1997 should not have been decided on Summary Judgment. (See HRS 502-83).

EZERA PA'S INTEREST IS MORE THAN 5/320

Pursuant to the Court's Order filed March 18, 1998, Ezera Pa has a 5/320 interest, i.e. approximately .0156% in the property. Ezera is the son of Lucy Kai Pa. By Quitclaim Deed dated October 20, 1997, recorded as Liber 13474, page 405-506, Lucy K. Pa Doiron transferred all her interest in the subject property to herself and Ezera Kai Pa, as joint tenants. (Exhibit "F"). Lucy Kai Pa subsequently inherited from her brother John Kai, an additional ten

percent (10%) interest in the subject property. (Exhibit "A", at page 7). When Lucy subsequently transferred her interest in the subject property to Roy Kaii, she transferred only her one-half (1/2) interest, as she was a joint tenant with Ezera Kai Pa, and therefore could not transfer Ezera Kai Pa's interest in the property. (Exhibit "G"). Although it can not be determined exactly at this time, it appears that Ezera Kai Pa's interest is greater than that shown on the Order filed March 18, 1998.

CONCLUSION

Accordingly, the Defendant Ezera Kai Pa would request this Court to reconsider, alter or amend, and/or set aside the Order Granting Plaintiffs' Summary Judgment Motion Re: Title and Partition, filed March 18, 1998, as Plaintiff did not meet their burden, and there are clearly questions of fact and law to be ecided by this Court.

DATED: Lihue, Hawaii, March 5, 1999.

HAROLD BRONSTEIN
Attorney for Defendant
Ezera Pa

①

Aloha My name is Leilwin Kalei Mahuiki-Denson. I am full blooded Kanaka Maoli from Haena. I have four children. As for me and my Ohana I would like the U.S to give back what is rightfully Ours. Give back the Land, the tears and pain, Our Language, Our Nation. Anything less and I will say A'ole. (No).

The devastation caused by the United states was like that of something I have seen. Like hurricane Iniki. Everything was taken from us like our ancestors. We are the the Kanaka Maoli people who have lived here for 17 Centuries on those islands, self reliant with respect for all living things. In Only a decade we have repaired much of what Iniki did. The devastation our ancestors saw as our Kanaka Maoli people declined, were wiped out, From 800,000 in 1778 to just 33,000 115 years later. Queen Liliuokalani had many who would have killed and died for her but she was not willing to lose one!

(6)

In a carefully worded statement
she yeilded to U.S president Grover
Cleveland. Our Queen believed
U.S justice would prevail! She
died waiting My father died
waiting. Am I, to also die waiting!?
maybe? A decade has done much
for Iuki's devastation. A 104 years
and we have made no progress for
us "The Kanaka Maoli". We Suffer.
The provisional Gov't Burned my
ancestors homes to the ground in
Kalalau chasing a Kanaka
Maoli Ko'olau and his family who
had contracted leprosy and did not
want to be deported. I have enclosed
the story an evidence. All our family
lands in the Napali was seized
unfairly, unconstitutionally
Will the bill help us to recieve
justice or is it like public law
103-150 a ghost an illusion
Nothing has changed since 1993
will anything change? After this
new Bill. I do not want our name
to change we are Kanaka Maoli,
A'ole olelo haole we are not native
Hawaiian or Native Americans. I see
and say this is a lie!

(3)

My Manao is give back our National lands and money and we will take care of ourselves. Stop Calling us Native Hawaiian it is insulting and shameful. and let not my words but that of our beloved Kapuna guide you. Queen Liliuokalani wrote and stated to wit: I shall not claim that in the days of Capt. Cook. Our people were Civilized. I shall not claim anything more, than has been already attested by missionary writers. Perhaps I may safely claim even less. Admitting the criticism of some western visitors who were not missionaries... that the habits and prejudices of New England puritanism were not well adapted to the genetics of a tropical people. Where else in the world's history is it written that a savage people made equal progress in civilization and christianity, in the same space of time. What people have ever been subjected to such a flood of external demoralizing influences while four fifths of the population of our islands were swept out of existence by a vice introduced by foreigners.

(4)

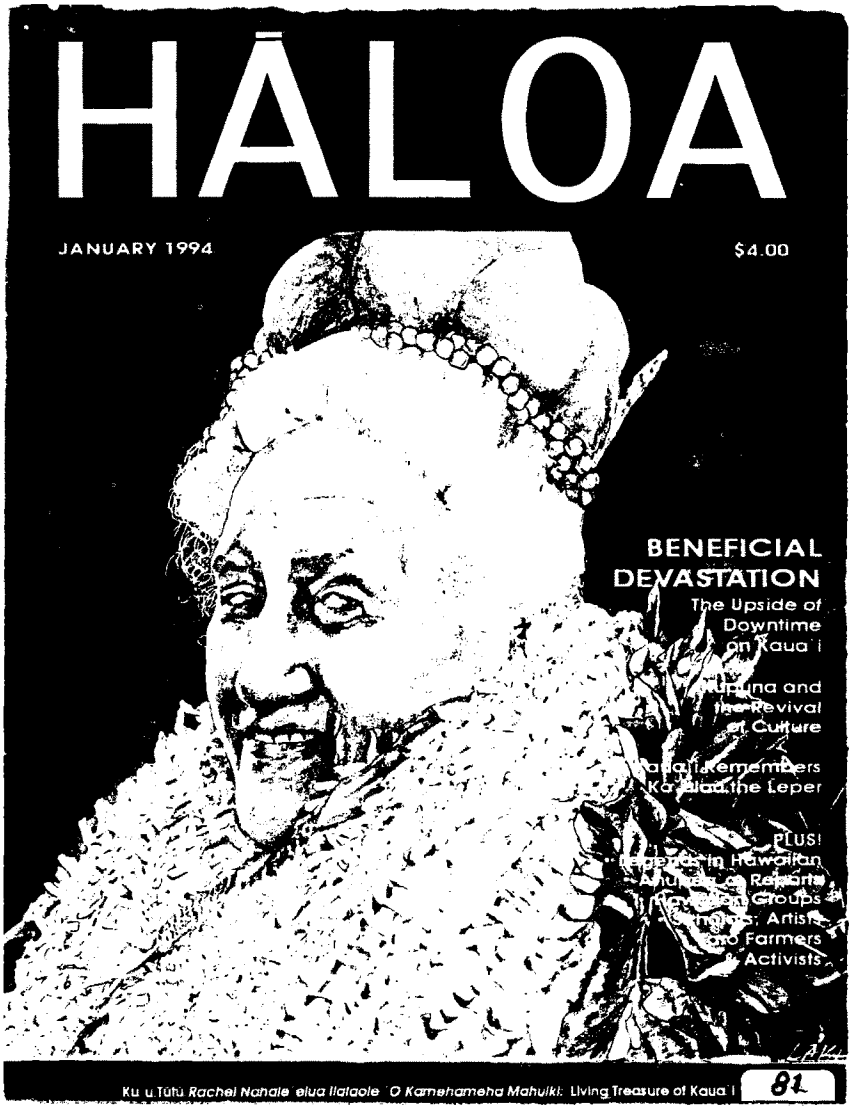
The ruling class cling to Christian morality... loyally cling to the brotherly alliance made with the better element of foreign settlers, giving freely of its sons and daughte to cement and to prosper it. Will it also be thought strange that education and knowledge of the world have enable us to perceive that we have some special mental and physical requirements not shared by other races. which have come among us, that certain habits and modes of living are better for our health and happiness then others and that a separated nationality and a particular form of government are best for us? These things remained to us, until the pitiless and tireless annexation policy was effectively backed by the Naval power of the U. S. It had not entered our hearts to believe that these friends and allies from the U.S, would ever seize our nation by the throat and pass it over to an alien power. perhaps there is a kind of right... known as the right of conquest under which robbers

(5)

and marauders may establish themselves in possession of whatsoever they are strong enough to ravish from their fellow man. If we have nourished in our bosom, those who have sought our ruin, it has been because they were of the people whom we believed to be our dearest friends and allies. If we did not by force resist their final outrage, It was because we could not do so without striking at the military force of the U.S. The people of the islands have No Voice in determining their future, but are virtually relegated to the condition of the tyrant nation, the United States. These are the facts let us Never forget. Let us move forward toward justice. Led by our Kapuna and Aumakua. Free in our hearts until things are pono in our home lands. (Hawaii)

Aloha Mahalo and may Akua guide you all to do what is right. A Hui Hou.

Cecilia Mahuiki-Denson


HĀLOA
JANUARY 1994
$4.00
BENEFICIAL DEVASTATION
The Upside of Downtime on Kaua'i
Kupuna and the Revival of Culture
Kaua'i Remembers Ka'ālaū the Leper
PLUS!
Legends in Hawaiian Anuhe'a Reports
Hawaiian Groups
Artists
Farmers
Activists
Ku'u Tūtū Rachel Nahale'elua Ilalaole 'O Kamehameha Mahuiki: Living Treasure of Kaua'i
81

Chronicle of Events - 1850s to present

1855 June 13	Abner Paki died, leaving a wife Konia, daughter Bernice Pauahi Bishop and an adopted daughter Lydia Kamakaeha.
1857	Konia died leaving a large landed estate to Bernice Pauahi Bishop
1858	Bernice Pauahi Bishop sold Haena to W. H. Pease, a surveyor
1871 June 29	Death of William H. Pease
1872	The administrators of the Pease Estate conveyed Haena to William Kinney
1875	William Kinney sold Haena to Kenoi Kaukaha and 37 other individuals as tennants in common. Approximately 2,500 acres were transferred.
1880-81	"Mahuiki and Company of 30 natives" are listed as "taro planters" at Haena. The company was said to have owned 900 acres of which 40 were in active cultivation. (Bowser 1880:294)
1900	The first Federal Census recorded at least 7 households in Haena (see Abstract of 1900 Census...appended).
1910	The second Federal Census recorded at least 15 households in Haena (see Abstract of 1910 Census...appended).
	The Robinsons (Alice Robinson, Miss Eleanor Robinson and Selwyn A. Robinson) acquired 8.9458 shares of Haena Hui lands.
1900-1960	All published City Directories for the island of Kauai were checked for these years to locate information on taro and rice cultivation as well as poi production in Haena. Nothing conclusive was found in print to indicate short or long term activity in these industries. No doubt exists that these industries flourished; nothing could be found in literature to substantiate the volume of activity or details of these industries in Haena.
1946 April 1	Tidal waves destroyed Haena village which was described as having "a small year round population of Hawaiians, numbering about 60..." 9 dead and 1 missing. (see appendices for typescripts of news articles as they appeared in the daily presses)
1955 June	Haena Hui members John Gregg Allerton and Paul G. Rice filed a petition for partition and dissolution of the Hui. Judge Benjamin Tashiro began proceedings for 98 individuals, couples and families. He assigned Henry C. Wedemeyer (Chair), Yeiso Yamamura and Nicholas A. Akana as commissioners to study and propose a plan to give clear title through land court to all holdings. In addition, they were to equitably assign water rights and easement privilleges.

1957 March	Tidal waves again strike Haena (see appendices for typescripts of news articles).
1967 April 11	The three Commissioners submitted their report proposing among many other things, that four parcels be transferred to Kauai County (Maninîholo, Waiakanaloa and Waiakapalae caves and Lohiau's housesite). The County was tasked with the maintenance and preservation of the sites for the general public. Disregard of these responsibilities meant automatic transfer of the sites to the Pacific Tropical Botanical Garden. Title to another parcel was given to John Gregg Allerton with the condition that he maintain and preserve a five-foot wide path for public use in accessing the heiau and hula grounds. Upon his death or conveyance of properties, title would automatically pass to the County. The State expressed the desire to acquire 40 acres of prime beach frontage for a public park; the land in question was held by the Robinsons who had already donated funds as well as land for road widening.
1967 June 23	Four unawarded lots were auctioned to raise funds to cover the legal costs of partition. The auction was limited to existing share-holders and $35,801 was netted.
late 1960s-early 1970s	Howard Taylor (brother of the actress Elizabeth) acquired a large parcel of land within the park site. Taylor Camp, "a small community of shacks, lean-tos and plastic covered frame houses" was soon established by a transient "hippie" population. No samitary facilities nor garbage disposal provisions over a period of time caused the State to eventually condemn the property which was then added to park acreage. Local residents claimed that the sanitation problems caused by the camp resulted in the disappearance of mullet and other fish that formerly had been plentiful in these waters. (Duffy 1983:48)

KALALAU Co

in the answers, as the Native Hawaiians could not get state permits to legally camp in Kalalau.

"We know that those people didn't have permits," Torio said.

They also politely asked the hikers and campers to put their clothes back on, she said. The hikers and campers obliged.

She wants to go along Na Pali more often, to police the area and let people know this isn't the place for nude sunbathing.

"I think I showed them something. They were awakened," she said of the 12 Native Hawaiian children in grades seven through 11 who participated in the program.

"It was a good, wonderful, wonderful experience for them, and me," she said.

"It was awesome. And you know what?" she said.

"Our people need that. They need to be reconnected to places like this, even if it's just once a year or whatever, because it does a lot for the spirit.

"And you can hear our kupuna. You can hear them and feel them in

A DOZEN Native Hawaiian students took part in a summer school program camping for two weeks in the Na Pali Coast wilderness where they learned about Hawaiian protocol, prayers, chants, rituals, and how to care for the land and water. They also witnessed disrespect for sacred sites and the native culture.

Lessons from the Kalalau Valley

By PAUL C. CURTIS
TGI Business Editor

NU'ALOLO KAI — Imagine an intense summer school experience for Native Hawaiian children, learning proper protocol, prayers, chants, personal cleansing rituals, and how to care for the land and water, in one of the most beautiful places on earth.

Further imagine the impact on these children of seeing people walking around naked or near-nude, disrespecting or destroying prehistoric and ancient Native Hawaiian sacred and important sites, and interrupting rituals.

Imagine no more.

It happened on the Na Pali Coast in Kalalau and Nu'alolo to participants in Ka Wai Ola O Kaua'i (The Life-Giving Waters of Kaua'i), a program stressing water rights and stewardship for the land and water.

"And it's such a shame to be in a place like this and all of a sudden your moment is ruined because you turn to the right and there's some stupid, idiot, naked haole sitting on the altar, because it's obviously the best view," said Ipo Torio, program leader.

"It's like, there goes two weeks of really drilling the protocol into the kids, so that they know these prayers, and they know this oli, when two hikers walk by wearing barely anything, and they stop to ask questions.

"It's like, hello, can't you see we're in the middle of a ceremony?" Torio said.

"If you don't know what you're doing, what you're caring for, you don't belong there," she said.

Torio is also site coordinator for Na Pua No'eau (children blossoming toward self-discovery), centers for gifted and talented Native Hawaiian children headquartered at the University of Hawai'i at Hilo, with a branch on this island at Kaua'i Community College.

"What we wanted to do was connect the kids to their culture," Torio said.

What the children saw was people camping out on Na Pali Coast beaches, people abusing sacred sites, sitting on altars as if they were chairs.

"What we wanted to do was show the kids this, and get them excited and involved, so that when they go back home or when they're here, they'll pay more attention to stuff like this," Torio said.

"We really wanted to get into Kalalau," but even though the group tried to get permits to go into Kalalau beginning a year ago, they couldn't get the necessary state permits, Torio said.

So they went in through the back door, tagging along with a state archaeologist, Maurice Major, with the state Department of Land and Natural Resources Division of State Parks.

Major is mapping and interpreting archaeological sites in Nu'alolo.

"I was bringing all Hawaiian kids, and it was about going in there to care for the 'aina, and really documenting what's going on," Torio said.

Instead of camping in Kalalau, as they wanted to do, the group had to hike to Nu'alolo and camp there, and then take a boat back to Kalalau.

The group did lots of cleaning of areas of Nu'alolo, including an area that at one time was a spring that provided the valley's drinking and agricultural water.

"Their hard work in clearing vegetation and 'Iniki dead-fall will make it easier for us to map and interpret the archaeological sites," wrote Major in a letter to David Sing, Na Pua No'eau administrator.

"The kupuna will be pleased when they see the results," Major said.

"Nu'alolo was wonderful, and it still gave the kids an experience. But I really wanted to show them that this is what's happening (in Kalalau)," Torio said.

"You can pick up any brochure and it'll tell you that Kalalau is the place to go, because you're allowed to do certain things, like run around naked, and all this other BS, which is insulting to me as a Hawaiian.

"And really, I wanted them to be insulted, too. If we don't take care of our own back yard, who will?"

By the time the group reached Kalalau, they had already spent time in Nu'alolo.

It was the end of two weeks of the program, and she felt the participants in the program had reached another level.

Since Kalalau has three significant heiau, it was important for the participants to undergo a cleansing ritual before entering, she said.

Kahu Lloyd Ikaika Pratt led them through the heiau, and through the cleansing process.

While in Kalalau, the group asked hikers and campers if they had permits. They were especially interested

See KALALAU, Page 2

Section 6
Conclusion

The archaeological reconnaissance survey executed under Contract No. 10046 with the Division of State Parks, Department of Land and Natural Resources, State of Hawaii, fulfills two objectives: 1) it presents an inventory of cultural resources for portions of the Na Pali Coast State Park and 2) it assesses the impact of visitor use and feral animal populations on those cultural resources.

The survey showed extensive aboriginal and Hawaiian development of much of the valley lands and some of the ridge areas in what is now Na Pali Coast State Park. A range of activities, including agricultural, habitational, and religious, are represented by surface remains. Buried cultural deposits exposed in eroding stream banks suggest long term occupation, which is also supported by historic data from as early as 1835 and by excavations in Ha'ena and Nu'alolo Kai, with cultural material dating back to around A.D. 1000 and A.D. 1300.

Visitor impact is concentrated in areas of intensive use, such as campgrounds in Hanakapi'ai, Hanakoa, Kalalau, Nu'alolo Kai, and Miloli'i. Activities, such as the digging of holes for outhouses, firepits, and garbage disposal, and the removal of stones from surface features for tent sites and camp fires, are the primary causes of site destruction. Trail use results in only moderate impact on cultural resources. Feral animal populations have minimal direct effect on archaeological sites.

Erosion is a major cause of site deterioration. Lateral stream movement and flooding are eroding archaeological features; this is especially evident in the smaller valleys of Awa'awapuhi and Nu'alolo 'Aina (see Plate 40). Talus accumulations are destroying sites, many of them habitation features which typically occur at the bases of steep valley walls.

The management of archaeological sites on the Na Pali coast can be handled in conjunction with the maintenance of the wilderness nature of the State Park. Both are fragile resources and management requires limited access; any increase in visitor use beyond the present restrictions would result in detrimental impact on the archaeology. In areas where there are no other alternatives, immediate mitigation in the form of intensive mapping or excavation is recommended. But preservation is strongly advocated as the substance of cultural resources management in Na Pali Coast State Park.

The Na Pali coast is a valuable archaeological resource for an understanding of Hawaiian prehistory and adaptation. The extent and nature of the archaeology in the State Park provide an incalculable resource for scientific investigations. But significance goes beyond an academic evaluation of importance. The Na Pali coast is of value to the people of Hawai'i as it represents a part of history and a way of life that once existed in these islands but is not now reproducible.

A-4 • Wednesday, January 13, 1999

Native Hawaiian family fights for land on Kauai

By Trish Moore
Kauai correspondent

HANALEI, Kauai — While growing up, Leiliwin Mahuiki-Denson watched one native Hawaiian family after another — many of whom were relatives — move away from Kauai's north shore to where the rent is affordable.

She's 22, full-blooded Hawaiian, and the great-great-great-granddaughter of Kalaimamahu, who was half-brother to Kamehameha I.

Now, she and her husband, David Denson, their three children, and their cousin Robert Pa have taken up residence on a kuleana lot in Hanalei. They say they have no intention of leaving.

But they might have to because a prominent Realtor and businessman has bought most of the shares from other heirs to the property, and has filed a court petition to have the land sold at public auction.

Mike Ching says he wants to buy the land outright to clear up encroachment problems with his rental houses on adjacent property.

The family is fighting the action, saying the land, and not the money, is what's valuable to them.

"They just acting like it's a big illusion to us," said Robert Pa. "The dollar bill is an illusion. I'm gonna die on this property."

Robert Pa's uncle, Ezera Pa, was born and raised on the one-acre lot and owns about 5 percent interest. The property, located next to the highway in Hanalei Town, has two fairly dilapidated houses on itwhich have stood vacant for the last few years.

The family's interest in the land traces back to 1888 when their ancestor, J.H. Kaheleiki, conveyed it to his descendants as tenants in common.

One of those descendants, Sharon Segawa, held 11.2 percent interest in the property and began the court action in September 1997 to partition the land and extrapolate her interest. A title search turned up 162 heirs.

Segawa sold her interest to Ching in October 1997, who then bought most of the shares from other heirs and took over the partition case. He now claims 76 percent ownership.

When Ezera Pa learned of the move to quiet the title and partition the property, he asked his nephew, Robert, and niece Leiliwin Mahuiki-Denson and her husband David to move onto the property.

The family has sent letters to other cousins that have not sold their shares to Ching, urging them to combine their separate interests in hopes of subdividing out a legal-size lot.

So far, the Pas say they have control, but they need 25 percent for a legal-size lot.

"What this gets down to, is either we stick together and we have a chance to put eight of our Ohana back on their Hawaiian Lands, or we sell to the Chings," Ezera and his wife, Joyce, wrote in the letter to other heirs.

They say Ching refused an offer to reimburse what he paid for his shares — an average of $1.52 per square foot, according to court documents — plus 20 percent. The land is assessed at $321,000.

Ching contends that "no formal offer was made" for his interest.

"If they were civil to me and talked about it peacefully, we might have settled with them," he said. "They just started off nasty."

Ching said he's been verbally harassed by the family and had to obtain a court order to have Pa and Denson remove a fence they had erected on the property.

"There's a sense of fair play that everybody has to go through," he said. "If I knew this was not right I would not have proceeded with the whole thing. They need to learn that there are certain laws set up, that we're all following basically."

Robert Pa and Denson say the issue is part of the struggle for native Hawaiian sovereignty.

They plan to argue in court that the 1993 federal "Apology Bill," recognizing the illegal overthrow of the Hawaiian monarchy, supports their claim that the court has no jurisdiction to force native Hawaiians to sell their land.

"There shouldn't be a way for outsiders to quiet title native Hawaiian land," Denson said. "It's detrimental for the people. It's how they lost most of their land."

If they lose in court, they plan to "defend our land with force, if necessary," Denson said.

The family sought the help of the Office of Hawaiian Affairs to try and settle the dispute with Ching.

Trustee Clayton Hee spoke with Ching, but said Ching wasn't open to negotiation.

"There needs to be a better way to resolve disputes when a disinterested third party buys out," Hee said. "That's the larger issue. Clearly this is a way in which Hawaiians have found themselves to be on the short end of the deal."

Hee said the last meaningful effort addressing ownership of kuleana lands was in 1985.

The Legislature passed what is known as escheat laws, where kuleana lands that were vacated no longer reverted to the state, but to OHA, which is charged with trying to locate heirs to the prop-

PERSONAL TESTIMONY THE AKAKA NATIVE HAWAIIAN BILL

TO: Senator Daniel Inouye, Senator Daniel Akaka, and members of the Senate Committee on Indian Affairs

FROM: Chipper Wichman, resident of Ha`ena, Kaua`i, Hawai`i

DATE: August 23, 2000

SUBJECT: Personal Testimony on the Akaka Native Hawaiian Bill

Aloha mai Senators Akaka and Inouye and members of the Committee on Indian Affairs:

O Chipper Wichman ko'u inoa. He kama'āina au mai ke ahupua`a o Hā'ena mai. My name is Chipper Wichman, and I am a kama'āina from the ahupua'a of Hā'ena on the island of Kaua'i.

I am here today with a heavy heart, one that is full of confusion and distrust. After much thought and discussions, I have decided that I can not support the Akaka Bill as it is currently written. While there is much in the bill that is maika'i, or good, there is, in my humble opinion a major defect that is so great that I have chosen to come and testify against the bill. Let me explain.

As you well know, the kanaka maoli, the native people of this land, were a sovereign and independent people prior to the overthrow of the Hawaiian kingdom in 1893. At that time they enjoyed a nation-to-nation status with the United States and many other nations. The illegal overthrow of our Queen Lili'uokalani and her government could not have succeeded without the illegal participation of the United States. This is not speculation, this is fact.

While I am not a politician, or even a political activist, it seems simple enough to me that what needs to ultimately happen is for the United States to restore the complete and total sovereignty of the Hawaiian people. Not nation-within-a-nation status, as the Akaka bill implies, but the nation-to-nation status that was enjoyed by the Hawaiian Kingdom prior to 1893.

Until that status is achieved things will not be pono for our 'āina or our people. Our state motto, *Ua Mau Ke Ea O Ka 'Āina I Ka Pono*, was first proclaimed by our sovereign King, Kau'ikeaoūli when Great Britain restored the sovereignty of the Hawaiian Kingdom in 1843. This is what we as an indigenous people are striving for today. Today the *ea* (life) of our *'āina* (our land, our life) is threatened because things are not *pono*. We need to make it right, and Senators, you have it within your power to do just that.

Make no mistake, I clearly understand that sovereignty is a journey. One that is not achieved overnight, and one that will not be achieved by the passage of this bill. There will be many steps along the way that will help our people to become prepared for the full responsibility of governing our nation once again.

In many, many, ways, I believe that the Akaka Bill is one of these important steps, and I would love to support it as long as it does not, in any way, diminish the rights or goal of the Hawaiian people to achieve full sovereignty in the future.

This bill is maika'i in that it will clearly establish the Native Hawaiians as the indigenous people of Hawai'i, it restores the Crown Lands, ceded under protest by our Queen Lili'uokalani, to the control of the Hawaiian people, it will protect public and private programs for our native people that are now being challenged as "racially unfair", it will reaffirm the United State's responsibility to right the great wrongs that it has perpetuated over the last century.

Unfortunately, to my great dismay, this bill attempts to do all of these good things in the framework of a nation-with-a-nation status. We need to be assured that this status, this model of sovereignty is just one step along the way in our journey, and that the US is prepared to assist us to reaching our ultimate goal—that of total nation-to-nation sovereignty.

While section 2 [beginning on line 23] on page 32 attempts to assure that this bill will not diminish the rights of Native Hawaiians to self-determination, I believe it falls woefully short. In my view what is needed is a whole new section, one that clearly states the rights of Native Hawaiians to have total nation-to-nation sovereignty and which pledges the support of the Untied States to achieving this ultimate goal. The US conducted a crime in assisting in the over throw of our sovereign nation, and now is the time for the US to assist in its restoration.

Senators, I strongly urge you to use your great power and influence **to amend** this otherwise monumental legislation so that it protects our right to total sovereignty in the future. We stand on the threshold of a new day, a new era—one that will see justice returned to the Hawaiian people.

O wau iho no me ka ha'aha'a. He kupa wau no ka 'āina o Hā'ena wale no.

Chipper Wichman
P.O. Box 753, Hanalei, HI 96714
Phone: (808) 826-5547
e-mail: wichman@ntbg.org

①

I Robert pa live at waioli, District of Hale'lea on Kauai. I for the record object against the United States meddaling in our internal Affair. We do not need You the tyrant, the robber who came with his religion and placed my people on the cross. Your ancestor brought mosquitos Leprosy, Yellow fever, syphillis, small pox, chicken pox and death. While our ancestors fattened you on the aina. Our taro, pigs, bananas, and water. Always we give, Always You take.
Justice, Reconcilliation words You use to manipulate the Kanaka Maoli.
Give back what was taken. Our Lands, Compensate us for this hell we and our ancestors have had to live in! Nothing More Nothing less!
The land in Hanalei I live on is a Royal Patent. A title from Kamehameha III to my ancestor Koala. It is the last land my family owns on Kauai's North Shore.

②

Once we had thousands of Acres
Now not ever One acre Can we
Keep peacefully.

Mike Chung a wealthy realtor with
Colusion from Judge Masuoka
and the police are Quiet titling
our lands. No tax Debt, No money
Owed Land we have had 135 years
will be auctioned soon. I have
enclosed background material
so you can investigate and see
how we are being cheated of our
Inherent rights as well as your
Constitutional Rights.
The land in Waiohi is sacred to
me and my ohana Our ancestors
Iwi are in the aina and I will
never submit to the Rape of our
civil rights. Will this bill help me?
Will it stop the defacto racist,
backwards court system from
twisting justice as was done so
long in your south?
Will it restore our right to
worship as we do our Heiau Our
Sacred areas?

(3)

Will it stop the illegal immigration and introduction of disease and drugs? No! It will give you a way to say we did something good but you did not. I am a Kanaka Maoli Descendant of Alii Blood Descendant of Kamehameha and I do not and will not settle on Reconcile on your terms. As a citizen of the Lawful Kingdom of Hawaii. I tell you that the U.S. and state are breaking international Law by trying to force us into dealing with the Devil. We are a free Nation a proud People not to be told we are Native American I am much more I am a Kanaka Maoli.

Our family name is Da our kuleana lands and konohiki rights lie in Waiolu. Also land in Haena, Kalalau and Daoole lands in Hanalei and Anahola.

May my ancestors guide me
May my Queen strengthen me
We will never surrender to time
Memorial we will fight for freedom
From tyranny and oppression.

May AKUA FORGive You
and Guide You...

TESTIMONY OF THE OFFICE OF HAWAIIAN AFFAIRS
ON S. 2899, H.R. 4904
SUBMITTED AUGUST 23, 2000

Co-Chairs Senator Inouye and Congressman Abercrombie, Senator Akaka, Congresswoman Mink and Congressman Faleomavaega. My name is Clayton Hee, Chairman of the Board of Trustees of the Office of Hawaiian Affairs, and I am here to testify on behalf of OHA in support of Senate Bill 2899 and House Resolution 4904, relating to federal recognition for Native Hawaiians.

Let me start by thanking our Congressional delegation for their hard work over the years in securing programs for the benefit of Native Hawaiians and for their leadership and support of the Hawaiian community at this critical time.

The pursuit of justice for Hawaiians has been a long and arduous journey. For the overwhelming majority of Hawaiians, justice means political status and federal recognition, the restoration of our inherent sovereignty and redress from the United States for the illegal overthrow of the Kingdom of Hawaii in 1893.

Our struggles have intensified in the last 40 years in pursuit of justice for Hawaiians, but we have reached a crossroad in that journey where recent events have shown us all too clearly that we must act now – we must take a monumental step forward in our efforts to find justice for Hawaiians or risk the loss of essential programs and benefits gained for our people.

By recent events I am referring, of course, to the "Freddy Rice case" and its fallout – at least the fallout to date. Earlier this year, in Rice v. Cayetano, the U.S. Supreme Court ruled that Hawai'i's denial of Rice's right to vote in OHA trustee elections violated the Fifteenth Amendment. As a result, all registered voters in Hawai'i have the right to cast ballots in the election of trustees to the Office of Hawaiian Affairs regardless of ancestry.

Another lawsuit has been filed recently to eliminate the Hawaiians-only restriction on candidates for election to the office of OHA trustee. One of the plaintiffs in this matter has succeeded in obtaining a preliminary injunction from the federal district court allowing him, as a non-Hawaiian, to file nomination papers to run for OHA trustee. The plaintiffs have made no secret of their desire to bring about the demise of OHA.

The Rice decision will continue to breed similar lawsuits. It will continue to be utilized to erect roadblocks along the path to justice for Hawaiians. As I have said, it is not only our future progress that is at risk, but erosion of the many advances Hawaiians have gained in health, education and housing benefits with the dedication and support of our Congressional delegation. Both state and federal policy makers have acted on the premise that programs provided for the benefit of Native Hawaiians have been legal, constitutional and morally right. The Rice decision opens the door to challenge the entire framework of federal and state laws put in place to benefit Native Hawaiians until our status as a native people has been settled.

So we are at a critical moment in our history as a people. The Rice and Arakaki cases directly impact OHA, but if we fail to act now, these challenges to our rights as a native people will have far reaching and more devastating impacts on Hawaiians and non-Hawaiians who benefit from programs that are available to Hawaiians.

All of these concerns and the urgency felt in the community have given rise to the legislation before us. We are fortunate that Senator Akaka and Senator Inouye, Congressman Abercrombie and Congresswoman Mink have undertaken leadership in this matter and have sought, and continue to seek, the mana'o of the community, both Hawaiian and non-Hawaiian, to

move us forward toward justice for Hawaiians by seeking formal recognition of our political status as a native people.

Today, more than 550 indigenous peoples have already attained such recognition from the federal government. Federally recognized indigenous peoples have the right under U.S. law to special benefits in the areas of health, education, housing, social services and economic development. They have the authority to govern themselves, to elect their own leaders, to determine their own membership and to have their own land base. The Navajo Indians have over 14 million acres of land in several states. The Alaska Natives have over 44 million acres of land. Although there are more Hawaiians than Navajos, Alaska Natives or any other native peoples in the United States, Hawaiians have remained without recognition of our right to self-govern and a settlement that would provide us with a land base which is crucial to our economic and spiritual well-being. The best case scenario is for Congress to formalize the political status and federal recognition of Hawaiians and this bill expedites constituting a representative political entity.

This legislation provides us with the opportunity not only to protect current programs for Hawaiians, but to meaningfully address this lingering injustice. As such, it is the first step, but an essential step, on the journey for Hawaiians towards reconciliation. The President and Congress have committed themselves to the process of reconciliation with Hawaiians through the Apology Bill. Senate Bill 2899 and House Resolution 4909 promote such reconciliation by acknowledging as a matter of policy that:

* Native Hawaiians are a unique and distinct aboriginal, indigenous, native people, with whom the United States has a political and legal relationship;
* The United States has a special trust relationship to promote the betterment of Native Hawaiians;
* Congress possesses the authority under the Constitution to enact legislation to address the conditions of Native Hawaiians and has

exercised that authority;

*
* Native Hawaiians have an inherent right to (i) autonomy in their internal affairs; (ii) self-determination and self-governance, and (iii) reorganization of a Native Hawaiian governing body; and that
* The United States shall continue to engage in the process of reconciliation and political relations with the Native Hawaiian people.

To that end, the proposed legislation provides for:

* A process by which Native Hawaiians can organize themselves for the purpose of self-governance. Significantly, the process is inclusive. There is no pre-determination as to the form that governing body will take.
* Establishment of an Office of Special Trustee for Native Hawaiian Affairs. The Office is not the federalization of OHA, but a new office within the Department of Interior to, among other things, effectuate the special trust relationship between the Native Hawaiian people and the U.S., to assist the Native Hawaiian people in facilitating the process for self-determination, and to be responsible for continuing the process of reconciliation with the Native Hawaiian governing body.
* Designation of a representative in the Department of Justice to assist the Office in implementation and protection of the rights of Native Hawaiians, the Native Hawaiian governing body and its political and legal relationship to the U.S.
* Establishment of an interagency task force to coordinate federal policy concerning Native Hawaiians.
* Notwithstanding any other provision of law, notwithstanding the decision in Rice, federal recognition of the governing body organized by Native Hawaiians as the representative governing body of the Native Hawaiian people.

We are pleased that many of the foregoing initiatives were recommended by OHA in its reconciliation testimony to representatives of the Departments of Interior and Justice this past January. We are also gratified that there has been tremendous support in the community to include a process for self-determination in the bill -- a position which the Board of Trustees has consistently supported.

We would like to acknowledge our Congressional delegation once again for their leadership. While we recognize there remains a difference of opinion in the Hawaiian community regarding the methods of achieving the goal of self-determination, we believe this legislation provides us with a constructive process and a timely opportunity to achieve our ultimate goal of self-governance and, with a truly representative governing body, the achievement of a settlement with Native Hawaiians for the unlawful taking of our kingdom and lands. It rightfully leaves potentially divisive issues, such as blood quantum, for Hawaiians to decide as a self-governing people.

The timing of this bill is absolutely critical, in terms of the threats to Hawaiian rights that have only begun to surface in the wake of Rice and as a matter of policy if we are to achieve any kind of meaningful reconciliation with the United States. For Hawaiians, the time is now and the opportunity is ours to seize to move forward together on our common journey for justice.

In conclusion, I believe there are no other meaningful alternatives at present. This legislation will help Hawaiians protect our entitlements, but it does not preempt others from continuing their journey, including in the international arena. Let us be reminded of what Queen Liliuokalani once said:

> Nana i ka nana 'ole
> Lohe i ka lohe 'ole
> 'Ike i ka 'ike 'ole
> 'Oia ka mana'o, 'oia ka mana
> 'Oia ka piko o ka hua olelo o aloha.
>
> To see what cannot be seen,
> To hear what cannot be heard,
> And to know the unknowable,
> That is the meaning, that is the power.
> And that is the essence of the word aloha.

Thank you for the opportunity to testify on this measure.

Salt River
PIMA-MARICOPA INDIAN COMMUNITY
10005 E. OSBORN RD. / SCOTTSDALE, ARIZONA 85256-9722 / PHONE (480) 850-8000

August 22, 2000

Hon. Daniel K. Inouye, Vice Chairman
United States Senate
Committee on Indian Affairs
Washington D.C. 20510-6450

RE: SB 2899 and HR 4904

Dear Senator Inouye:

Please accept this letter as support of the Salt River Pima-Maricopa Indian Community with regards to SB 2899 and HR 4904. As a Native community, we are well aware of the importance and necessity of maintaining our separate identity as a distinct native community.

Native Hawaiians are in special need of developing and articulating their relationship with the United States, particular as it pertains to the trust relationship. It is an issue whose time has come.

Again, please accept our wholehearted support of the efforts of the Native Hawaiians.

Sincerely,

Lance Grey

Lance Grey
Acting Vice President

Eugene K. Pa
P.O. Box 265
Lihue, Kauai
Hi , 96766

August 12, 2000

Aloha:

I'm a descendent from Kaheowa'anuiponiliihoapa'ipa'inohohupa,
I will be speaking for the Pa family on Senate bill 2899 that M.R. Akaka Introduced .
My family of 5,000 needs more understanding towards Native Hawaiian Rights to Self-determination.

We would like to thank the Federal Government for coming to our Island , and giving us a chance to understand what this Bill is about.

Much... Mahalo's Senator Akaka, and Senator Inouye,

Eugene K. Pa
Kanaka Maoli Nation.

Eugene K Pa
Kanaka maoli
Nation !

KUMU OHANA

Source of Information
OHA

EZERA KAI PA
Applicant
% Hawaiian 100 % Others —
Birthdate 5/12/38
Birthplace HANALEI Kauai

STATE OF HAWAII)
) ss.
COUNTY OF)

On this 10 day of Dec A.D. 1997 personally appeared before me _____ to me known to be the person described in and who executed the foregoing instrument and acknowledged that ____ executed same as ____ free act and deed.

Notary Public Judicial Circuit
STATE OF HAWAII
My Commission expires _____

False statements on an application form shall be grounds for cancellation of any grant awarded an applicant. If the applicant received the grant and legal action is required to recover the proceeds, the grantee shall be liable for the sum of the grant together with the interest, court cost and attorney fees. Any applicant who obtains or exerts control over the property of OHA by deception with intent to deprive OHA of the property will be subject to prosecution for theft pursuant to HRS-708-830(2), Hawaii Revised Statutes.

Signature

TAGE 5

Father SAM PA JR.
% Hawn. 100 %
% Others —
Birthdate - 1911
Birthplace - KAU, HAWAII -
Died -
Occupation - TRUCK DRIVER
Source of Info Birth Certificate

Father's Father
% Hawn. ____
% Others ____
Birthdate
Birthplace
Died
Occupation
Source of Info

Great Grandfather
% Hawn. ____
% Others ____
Source of Info

Great Grandmother
% Hawn. ____
% Others ____
Source of Info

Father's Mother
% Hawn. ____
% Others ____
Birthdate
Birthplace
Died
Occupation
Source of Info

Great Grandfather
% Hawn. ____
% Others ____
Source of Info

Great Grandmother
% Hawn. ____
% Others ____
Source of Info

Mother LUCY KAI PA
% Hawn. 100 %
% Others —
Birthdate - 3-2-17
Birthplace - , KAUAI
Died -
Occupation Housewife Ezera
Source of Info Birth Certificate

SAM KAENA KAI
Mother's Father
% Hawn. 100 %
% Others —
Birthdate - Aug 9, 1892
Birthplace - KALIHIKAI KAUAI
Died 9-22-1959
Occupation
Source of Info

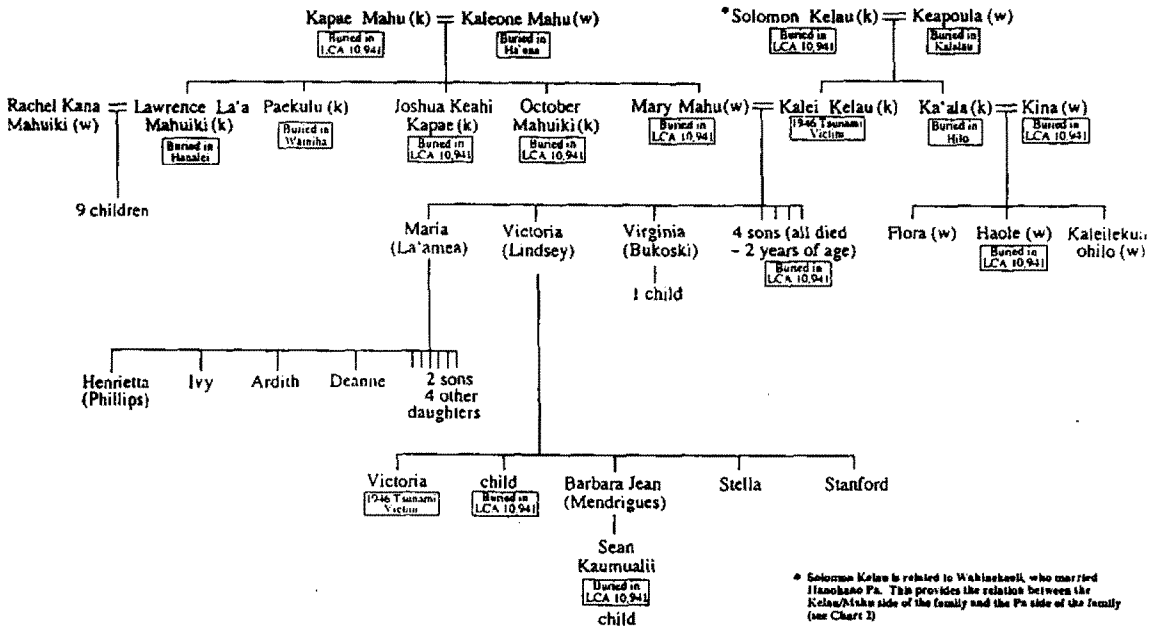
Samuel KAIA (KAI)
Great Granfather
% Hawn. 100 %
% Others ____
Source of Info

Nolake KAWAHAALE
Great Grandmother
% Hawn. 100 %
% Others ____
Source of Info

Lucy Pahuwai Kaheleiki
Mother's Mother
% Hawn. 100 %
% Others —
Birthdate - March 5, 1897
Birthplace - HANALEI, KAUAI
Died Sept 7, 1933
Occupation
Source of Info
See attached

Noah Kaheleiki
Great Grandfather
% Hawn. 100 %
% Others ____
Source of Info

Lauhiwa, TAMARA KAI
Great Grandmother
% Hawn. ____
% Others ____
Source of Info



* Solomon Kelau is related to Wahinekeoli, who married Hanohano Pa. This provides the relation between the Kelau/Muku side of the family and the Pa side of the family (see Chart I)

Courtesy - State Parks Division