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U.S. HOUSE COMMITTEE ON NATURAL RESOURCES' SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF
THE UNITED STATES – OVERSIGHT HEARING ON
“A YEAR IN REVIEW: THE STATE OF COVID-19 IN AMERICAN INDIAN, ALASKA NATIVE, AND
NATIVE HAWAIIAN COMMUNITIES”

March 23, 2021

Aloha e Chair Leger Fernandez, Ranking Member Young, Congressman Case, and other Members of the Subcommittee for Indigenous Peoples of the United States.

Mahalo nui loa (Thank you very much) for inviting me to testify on behalf of the Office of Hawaiian Affairs (OHA) and our beneficiaries—the Native Hawaiian community. I extend my aloha and congratulations to Chair Teresa Leger Fernandez and Ranking Member Don Young on your leadership positions on this critical House Subcommittee. I also send my very warm aloha to Representative Ed Case from Hawai'i for serving the best interests of our people, now in your second term on this Subcommittee. Fundamental to this Subcommittee's work is upholding and honoring the federal government's trust responsibility to all Native Americans, including American Indians, Alaska Natives, and Native Hawaiians. In addition, this body has jurisdiction over all matters relating to Native Hawaiians. As such, your work here empowers the Native community to continue exercising true self-determination—our right to chart our own course and maintain our distinct traditions, cultures, and Native ways.

I appreciate this opportunity to bring to your attention some of the Native Hawaiian community's most urgent needs. Like many of our Native cousins across the contiguous states and in Alaska, our people face disparities related to health and welfare, violence against women and children, the criminal justice system, and the effects of climate change. The ongoing Coronavirus Disease (COVID-19) pandemic has worsened these disparities. OHA is grateful for the leadership of many on this Subcommittee to ensure Congress provided assistance to the Native community through the American Rescue Plan; however, many long-standing issues related to the federal trust responsibility owed to Native Hawaiians remain unaddressed—Native Hawaiians have been left out of federal consultation requirements for too long; several federal programs that benefit Native Hawaiians are overdue to be reauthorized and strengthened, especially now with the lingering effects COVID-19; and Native Hawaiians still lack parity with other Native Americans in many federal programs and policies. We urge you to take action on these issues in the 117th Congress.

I. Background on OHA and Its Standing to Represent Native Hawaiians

Established by our state's Constitution¹, OHA is a semi-autonomous agency of the State of Hawai'i mandated to better the conditions of Native Hawaiians. Guided by a board of nine publicly elected trustees, all of whom are Native Hawaiian, OHA fulfills its mandate through advocacy, research, community engagement, land management, and the funding of community programs. Hawai'i state law recognizes OHA as the principal public agency in the state responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians.² Furthermore, state law directs OHA to advocate on behalf of Native Hawaiians³; to advise and inform federal officials about Native Hawaiian programs; and to coordinate federal activities relating to Native Hawaiians.⁴

II. Impacts of the COVID-19 Pandemic on the Native Hawaiian Community

A. Effects on Native Hawaiian Health and Welfare

The COVID-19 pandemic has exacerbated significant disparities among the Native Hawaiian community—which the U.S. Census Bureau approximates to include nearly 285,000 individuals, more than 20 percent of the State's population.⁵ At the onset of the pandemic, Native Hawaiians already faced disproportionate threats to our physical and mental health, including poverty,⁶ suicide and depression,⁷ intimate partner violence,⁸ infant mortality,⁹ alcohol abuse,¹⁰ homelessness,¹¹ and prejudices against Native Hawaiians. Native Hawaiians are more likely to suffer from coronary heart disease, diabetes, and asthma than non-Native Hawaiians in the State.¹² Hypertension—a modifiable risk factor for cardiovascular disease—is 70 percent higher in Native Hawaiians than in Caucasians.¹³ More than 25,000 Native Hawaiians suffer from diabetes¹⁴ and

¹ HAW. CONST. ART. XII, § 5 (1978).

² Haw. Rev. Stat. § 10-3(3).

³ Haw. Rev. Stat. § 10-3(4).

⁴ Haw. Rev. Stat. § 10-6(a)(4).

⁵ U.S. Bureau of the Census. American Community Survey. S0201 Selected Population Profile in the United States.

⁶ Anita Hofschneider, *Poverty Persists Among Hawaiians Despite Low Unemployment*, HONOLULU CIVIL BEAT (Sept. 19, 2018), <https://www.civilbeat.org/2018/09/poverty-persists-among-hawaiians-despite-low-unemployment/>.

⁷ OFF. OF HAWAIIAN AFFS. (OHA), NATIVE HAWAIIAN MENTAL HEALTH AND SUICIDE (Feb. 2018), http://www.ohadatabook.com/HTH_Suicide.pdf.

⁸ *Native Hawaiians at Increased Risk of Intimate Partner Violence During COVID-19 According to New Report*, OHA (Oct. 20, 2020), <https://www.oha.org/news/native-hawaiians-at-increased-risk-of-intimate-partner-violence-during-covid-19-according-to-new-report/>.

⁹ Ashley H. Hirai et al., *Excess Infant Mortality Among Native Hawaiians: Identifying Determinants for Preventive Action*, AM. J. OF PUB. HEALTH (Nov. 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3828695/pdf/AJPH.2013.301294.pdf>.

¹⁰ OHA, NATIVE HAWAIIAN HEALTH STATUS 22 (July 2019), <http://www.ohadatabook.com/NHHS.html>.

¹¹ OHA, ISSUE BRIEF: COVID-19 AND NATIVE HAWAIIAN COMMUNITIES, NATIVE HAWAIIANS OVER-REPRESENTED IN COVID-19 AT-RISK POPULATIONS 2 (2020).

¹² *Id.* at 1.

¹³ DEP'T OF NATIVE HAWAIIAN HEALTH, JOHN A. BURNS SCHOOL OF MEDICINE, UNIV. OF HAW., KA HOLO STUDY, <https://dnhh.hawaii.edu/research-evaluation/ka-holo-study/> (last visited Feb. 9, 2021).

¹⁴ Hawai'i State, Department of Health. Hawaii Health Data Warehouse. Behavioral Risk Factor Surveillance System.

more than 47,600 suffer from asthma.¹⁵ These factors contribute to the fact that Native Hawaiians, despite being the Indigenous peoples of the Hawaiian Islands, have the shortest life expectancy of any major population in the State.¹⁶

Mental health is also a serious concern for the Native Hawaiian community. Nearly 20 percent of Native Hawaiian adults reported that they frequently feel their mental health is “not good.”¹⁷ Although Native Hawaiians make up only 27 percent of all youth in the State between the ages of ten and 14, they constitute 50 percent of the completed suicides.¹⁸ In a recent survey commissioned by the Hawai‘i Department of Health, 82 percent of those who participated had experienced a mental health condition at some point over the last six months.¹⁹ Native Hawaiian respondents to the survey reported that they feel anxiety, panic attacks, and overall mental distress at significantly higher frequencies compared to other respondents.²⁰

Despite these risk factors in the community, 24 percent of the Native Hawaiian population have sacrificed for the greater good by serving as essential workers during the pandemic through the military, security, service, and healthcare industries.²¹

Social determinants of health like housing contribute to the onset of these diseases. Even as the pandemic continues into its later stages, many people and organizations are deeply concerned about a possible eviction, foreclosure, and rental crisis. OHA—as a member of a coalition of organizations in the State—is actively engaged in ensuring this crisis does not come to fruition for the Native Hawaiian community.²² As of June 2020, the U.S. Census Bureau estimated that approximately 20 percent of Hawai‘i’s households have been unable to make housing payments or do not feel confident they can make their upcoming rent or mortgage payments.²³ Struggles to afford rent and mortgage payments are not always reflected in the number of delinquent accounts. The University of Hawai‘i Economic Research Organization (UHERO) has administered monthly surveys during the pandemic. The results of these surveys over the past two quarters indicate a sustained increase in rental hardships during the second half of 2020,²⁴ including renters sacrificing well-being to pay rent.²⁵ UHERO’s most recent study of rental

¹⁵ *Id.*

¹⁶ ISSUE BRIEF: COVID-19 AND NATIVE HAWAIIAN COMMUNITIES, *supra* note 11, at 2.

¹⁷ NATIVE HAWAIIAN MENTAL HEALTH AND SUICIDE, *supra* note 7.

¹⁸ David M.K.I. Liu & Christian K. Alameda, *Social Determinants of Health for Native Hawaiian Children and Adolescents*, HAW. MED. J. (Nov. 2011),

https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3254224/pdf/hmj7011_suppl2_0009.pdf.

¹⁹ COVID-19 TRACKING STUDY PREPARED FOR: HAWAII STATE DEPARTMENT OF HEALTH, ANTHOLOGY MARKETING GROUP 4 (Jan. 2020), https://hawaiiicovid19.com/wp-content/uploads/2021/02/COVID19-Tracking-Study_DEC20.pdf.

²⁰ *Id.* at 20.

²¹ Joseph Keawe‘aimoku Kaholokula et al., *COVID-19 Special Column: COVID-19 Hits Native Hawaiian and Pacific Islander Communities the Hardest*, 79 HAW. J. OF HEALTH & SOC. WELFARE 143, 144 (2020).

²² *Hawai‘i Coalition Urges Increased Protections for Renters*, HAW. NEWS NOW (June 22, 2020),

<https://www.hawaiinewsnow.com/2020/06/22/hawaii-coalition-urges-increased-protections-renters/>.

²³ *Id.*

²⁴ *November Rental Market: Troubling Signs Remain as State Prepares for an Uncertain 2021*, ECONOMIC RESEARCH ORGANIZATION AT THE UNIV. OF HAW. (Jan. 14, 2021), <https://uhero.hawaii.edu/november-rental-market-troubling-signs-remain-as-state-prepares-for-an-uncertain-2021>.

²⁵ *The August Rental Market: Struggling Tenants and Rising Vacancies*, ECONOMIC RESEARCH ORGANIZATION AT THE UNIV. OF HAW. (Oct. 5, 2020), <https://uhero.hawaii.edu/the-august-rental-market-struggling-tenants-and-rising-vacancies>.

housing hardships in 2021 project that significant number of households will have unsustainable changes in their housing cost burdens in all four quarters and that some households' needs will extend beyond the end of 2021.²⁶ Even before the pandemic, many Native Hawaiians faced homelessness—making up nearly half of the homeless population on the island of O‘ahu,²⁷ in a State with one of the highest rates of homelessness in the nation.²⁸

Disparities between Native Hawaiian students and their non-Hawaiian counterparts are also at risk of worsening. Even before the pandemic, data collected in between 2015 and 2017 demonstrated that fewer Native Hawaiian students attained proficiency in math and reading than their non-Hawaiian counterparts.²⁹ In light of the pandemic, Hawai‘i is considered the state “most prone to academic risks during the coronavirus outbreak” and faces the “widest gap in the amount of teacher interaction with lesser-educated households compared with more-educated ones.”³⁰ Non-profit education programs, particularly language immersion programs, have faced unique hardships amid the pandemic. With the arrival of new COVID-19 strains in Hawai‘i, Native Hawaiian students face a precarious situation. To further aggravate this risk, nearly 9.0 percent of Native Hawaiian households do not have a computer in their homes, while nearly 15.2 percent do not have Internet access.³¹ During the pandemic, many families have been unable to afford the cost of new equipment and broadband service because many previously employed adults are no longer employed.

Further compounding these issues, the economic impacts of the pandemic have hit Hawai‘i particularly hard. Unemployment in the State has skyrocketed, and recovery efforts continue to lag. The U.S. Bureau of Labor Statistics reports that as of December 2020, Hawai‘i had the highest unemployment rate in the United States at 9.3 percent.³² Unemployment is unlikely to decrease significantly in the near future because one of our biggest industries—tourism—continues to be severely impacted. According to preliminary statistics released by the Hawai‘i Tourism Authority’s Tourism Research Division, visitor arrivals were 75.2 percent lower in December 2020 compared to a year ago.³³ Given that nearly one in four Native Hawaiians are employed in a service industry closely tied to tourism,³⁴ Native Hawaiians will likely continue to be disproportionately affected during the State’s long economic recovery.

²⁶ *Estimating COVID-19 Induced Rental Housing Hardship in 2021*, ECONOMIC RESEARCH ORGANIZATION AT THE UNIV. OF HAW. (Dec. 15, 2020), <https://uhero.hawaii.edu/estimating-covid-19-induced-rental-housing-hardship-in-2021>.

²⁷ ISSUE BRIEF: COVID-19 AND NATIVE HAWAIIAN COMMUNITIES, *supra* note 11, at 2.

²⁸ MEGHAN HENRY ET AL., U.S. DEP’T OF HOUSING AND URBAN DEV. OFF. OF CMTY. PLAN. & DEV., THE 2019 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS: PART 1 (2020), <https://www.huduser.gov/portal/sites/default/files/pdf/2019-AHAR-Part-1.pdf>.

²⁹ Kana‘iaupuni, Shawn Malia, Wendy M. Kekahio, Kā‘eo Duarte, and Brandon C. Ledward, with Sierra Malia Fox and Jenna T. Caparoso. *Ka Huaka‘i: 2021 Native Hawaiian Educational Assessment* 454-60 (2021), https://www.ksbe.edu/assets/research/ka_huakai/2021_KaHuakai_Ch3_SchoolAgeChildren.pdf.

³⁰ Alex Harwin & Yukiko Furuya, *Coronavirus Learning Loss Risk Index Reveal Big Equity Problems*, EDUCATIONWEEK (Sept. 1, 2020), <https://www.edweek.org/policy-politics/coronavirus-learning-loss-risk-index-reveals-big-equity-problems/2020/09>.

³¹ US Bureau of the Census. American Community Survey. S0201 Selected Population Profile in the United States. 2019.

³² *Unemployment Rates for States*, U.S. BUREAU OF LAB. STAT. (Jan. 26, 2021), <https://www.bls.gov/web/laus/laumstrk.htm>.

³³ *Hawai‘i Visitor Statistics Released for December 2020*, HAW. TOURISM AUTH. (Jan. 28, 2021), <https://www.hawaii-tourismauthority.org/media/6395/december-2020-visitor-statistics-press-release-final.pdf>.

³⁴ ISSUE BRIEF: COVID-19 AND NATIVE HAWAIIAN COMMUNITIES, *supra* note 11, at 3.

In conversations with Native Hawaiian-serving organizations, OHA learned of ongoing struggles to meet even basic community needs as a direct result of the pandemic and the subsequent economic crisis. Native Hawaiian educators and service providers have faced steep challenges in continuing to offer effective cultural programming to nurture our keiki (children) due to the lack of kupuna (elder) and keiki care options for staff. Even worse, some Native Hawaiian communities have reported that food security has become a major problem with the closing of schools and the unavailability of school lunches. While we hear heartwarming stories about communities coming together to ensure that no one is left to starve, this pandemic has demonstrated this continued vulnerability of the Native Hawaiian community.

The best policy solutions often include the most complete, accurate data from our communities. Despite our local efforts to identify key determinants, trends, and challenges that must be addressed, the failure to include Native Hawaiians in disaggregated national data provides an incomplete picture of our disparities and needs. We urge you to support the inclusion of Native Hawaiians in all federal data collection, studies, and reports on Native communities. We also urge this Subcommittee to ensure that Native Hawaiian programs and service providers are included in all future federal efforts to address the lasting effects of COVID-19.

B. Preventing and Stopping Violence Against Women and Children

Another urgent issue for our community is preventing and stopping violence against women and children. While the Native Hawaiian community does not possess a distinct area of law enforcement jurisdiction, the issue of violence against our mothers, sisters, and children nevertheless affects our people. Recent reports in Hawai‘i have shown that Native Hawaiians are disproportionately affected by sex trafficking. One study in particular found that in a survey of sex trafficking survivors, 64 percent identified as being Native Hawaiian.³⁵ Further, in numerous meetings with service providers and advocacy organizations, OHA was informed that child pornography and sex trafficking targeting Native Hawaiian children under the age of 12 is a particularly troubling crisis in the State of Hawai‘i. Similarly, OHA, along with its partners the Lili‘uokalani Trust, the Kamehameha Schools’ Strategy & Transformation Group, and the Domestic Violence Action Center, recently issued a report raising awareness of the vulnerabilities and impacts of COVID-19 on Native Hawaiians experiencing or at-risk of intimate partner violence.³⁶ Notably, we reported that in 2013, 13.4 percent of Native Hawaiian adults report experiencing physical or sexual abuse by an intimate partner, compared to 10.2 percent non-Hawaiian adults and 10.6 percent of the total adult State population.³⁷ Moreover, this form of violence is often underreported because survivors are afraid to come forward. National reports show that this pandemic has disproportionately affected communities of color and more is needed to ensure that access to support, refuge, and medical care is available to those who need it.³⁸

³⁵ See, e.g., DOMINIQUE ROE-SEPOWITZ & KHARA JABOLA-CAROLUS, SEX TRAFFICKING IN HAWAI‘I, PART III SEX TRAFFICKING EXPERIENCES ACROSS HAWAI‘I (2020), <https://humanservices.hawaii.gov/wp-content/uploads/2020/02/ST-in-Hawai%E2%80%98i-Executive-Summary-January-2020-FINAL-2.pdf>.

³⁶ NATIVE HAWAIIANS AT-RISK OF INTIMATE PARTNER VIOLENCE DURING COVID-19 (2020), <https://sites.google.com/ksbe.edu/nh-covid19/intimate-partner-violence?authuser=0>.

³⁷ *Id.*

³⁸ Megan L. Evans et al., *A Pandemic within a Pandemic—Intimate Partner Violence during Covid-19*, N. ENG. J. MED (Dec. 10, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2024046>.

We commend this Subcommittee on its work to protect Native women through the passage of the Not Invisible Act and Savanna's Act into law last Congress. These two bills address the issue of Missing and Murdered Indigenous Women (MMIW) by creating an advisory committee on violent crime to make recommendations and provide best practices and by creating new guidelines for responding to MMIW cases and incentivizing their implementation.

We urge you to include Native Hawaiians in your efforts to end violence against all Native women and children. Mahalo nui loa Representative Case for authoring an amendment to include Native Hawaiians in the Violence Against Women Reauthorization Act of 2021, which the House passed last week. Among other things, this amendment requires the Attorney General to report on the effects of crimes and the criminal justice system on Native Hawaiians, including the handling of cases involving missing and murdered women and children. These reports would also include recommendations related to the factors contributing to Native Hawaiians becoming missing or murdered and how to mitigate those factors. We urge Congress to pass this legislation and to ensure that Native Hawaiian women are consistently included in federal studies related to Native women.

C. Disparate Treatment of Native Hawaiians in the Criminal Justice System

The disparate treatment of Native Hawaiians in the criminal justice system in Hawai'i is well-documented. In a comprehensive 2010 report on the State's practices, OHA found that Native Hawaiians are disparately impacted at every stage of the criminal justice system, starting from arrest and continuing through parole.³⁹ The impact is cumulative, starting with a relatively small disproportionality at arrest, but revealing itself to be more distinct at sentencing and incarceration. Disproportionate representation at entry into the system is exacerbated by pretrial detention, which has been found to relate to an increased likelihood of incarceration, increased time spent away from community and family while in prison, and a potential increase in the likelihood of returning to prison.

Moreover, in 2018, all but one of Hawai'i's jails were overcrowded and operating substantially over capacity. Native Hawaiians disproportionately suffer the consequences of these overcrowding issues.⁴⁰ In 2005, of the 6,092 people who were in custody, 29 percent (1,780) were in facilities operated by other states or private companies. Even worse, of the people in out-of-state facilities, 41 percent are Native Hawaiians,⁴¹ and recent data shows that 48 percent of the prisoners at one private federal facility in Arizona—the Saguaro Correctional Center—are Native Hawaiian.⁴² Being incarcerated thousands of miles away from family members makes successful re-entry into the community upon release even more difficult. During this pandemic overcrowding further places Native Hawaiians at risk. Recent media reports have documented significant

³⁹ OHA, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM (2010).

⁴⁰ *Criminal Justice*, OHA, <https://www.oha.org/criminaljustice> (last visited Mar. 12, 2021).

⁴¹ *Databook 2006: Public Safety*, OHA (Mar. 2006), www.oha.org/pdf/databook/2006/DataBook2006PublicSafety.pdf.

⁴² *COVID-19 Raises the Curtain of the Ugly Stage of Justice in the United States: Incarceration of Native Women*, NAT'L INDIGENOUS WOMEN'S RES. CTR., <https://www.niwrc.org/rm-article/covid-19-raises-curtain-ugly-stage-justice-united-states-incarceration-native-women> (last visited Mar. 12, 2021).

COVID-19 outbreaks at Saguaro resulting in three deaths and more than half of the 1079 prisoners from Hawai'i testing positive as of last December.⁴³

OHA urges Congress to address this issue through three actions.

First, we need better data on the current state of Native Americans, including American Indians, Alaska Natives, and Native Hawaiians, in custody across all states, at all levels of government, and in both public and private facilities. We are especially concerned about the treatment and conditions of Native people in private facilities. We again urge Congress pass the Violence Against Women Reauthorization Act of 2021 with Representative Case's amendment, which would require the Attorney General to report to Congress on these issues as well.

Second, research shows that culturally relevant content is more effective in engaging Native Hawaiians in prison rehabilitation programs.⁴⁴ We urge Congress to ensure that a cultural-based program is available at every federal facility that houses a significant population of Native Americans.

Last, programs, resources, and coordination are needed to prepare incarcerated individuals for re-entry into society. We urge Congress to direct the Bureau of Prisons to develop such a plan for re-entering Native Americans. We also urge these programs begin during custody and extend through successful re-entry. We further urge these programs address housing assistance, domestic violence, alcohol and substance abuse, proper parenting, and other support tailored to Native people and their cultures. Representatives Kahele and Case recently offered an amendment to the Violence Against Women Reauthorization Act of 2021 to begin addressing this issue by including Native perspectives and needs in federal re-entry program development.

D. Ensuring Native Stewardship Principles are Included in Federal Climate Change Efforts

COVID-19 has also affected Native Hawaiian organizations working to mitigate the effects of climate change on our community and our resources. The climate crisis was already threatening our community by impeding the safety of our people, limiting available resources, and restricting the community's ability to maintain cultural resources and traditional practices. The consequences of climate change disproportionately affect Native Americans across the United States and exacerbates existing challenges to health and welfare within Indigenous communities. In fact, Hawai'i is already preparing for sea level rise, shore erosion, and increased natural disasters as the result of climate change.⁴⁵

⁴³ Kevin Dayton, *Two More Hawaii Inmates Who Died At Saguaro Prison Had COVID-19, New Details Show*, HONOLULU CIVIL BEAT (Dec. 7, 2020), <https://www.civilbeat.org/2020/12/two-more-hawaii-inmates-who-died-at-saguaro-prison-had-covid-19-new-details-show>; Kevin Dayton, *Has Saguaro Prison Failed To Protect Hawaii Inmates From COVID-19?*, HONOLULU CIVIL BEAT (Nov. 19, 2020), <https://www.civilbeat.org/2020/11/has-saguaro-prison-failed-to-protect-hawaii-inmates-from-covid-19>.

⁴⁴ OHA, *THE IMPACT OF THE CRIMINAL JUSTICE SYSTEM ON NATIVE HAWAIIANS* (2014), https://www.oha.org/wp-content/uploads/2014/11/factsheets_final_web_0.pdf.

⁴⁵ See, e.g., HAW. CLIMATE CHANGE MITIGATION & ADAPTATION COMM'N, *HAWAI'I SEA LEVEL RISE VULNERABILITY AND ADAPTATION REPORT* (2017), https://climateadaptation.hawaii.gov/wp-content/uploads/2018/01/SLR-Report_-January-2018.pdf.

Sea level rise has already had devastating impacts on our ecosystems. We are experiencing saltwater intrusion into our lo‘i kalo (Hawaiian taro fields) and changes to the delicate balance of fresh water and sea water in our loko i‘a (Hawaiian fishponds) and other coastal areas favorable for delicate resources like limu ‘ele‘ele and huluhuluwaena (edible seaweeds).⁴⁶ As a result, some Native Hawaiian families have abandoned their lo‘i kalo since taro cannot grow in salt water. At the same time, coastal resources—like edible seaweeds—are struggling to survive the changing environment and other opportunistic species.

Sacred burial areas are also threatened by rising sea levels and related coastal erosion.⁴⁷ There are well over 10,000 or more known or suspected burials situated along the coastlines of Hawai‘i. As the coastlines erode, the iwi kupuna (ancestral bones) are exposed or washed away. The uncovering of ancient burial sites has even led to some individuals removing these remains from their burial sites for personal collections.

Beyond these impacts to the culture and traditions of the Native Hawaiian community, Hawai‘i is one of only two states in the nation to experience a local Dengue Fever outbreak in the past five years.⁴⁸ Vector-borne diseases, particularly those transmitted by mosquitoes, are thriving as average temperatures in Hawai‘i increase.⁴⁹ Not only do these diseases affect the people of Hawai‘i, they also place the population of already endangered, endemic birds at further risk of extinction.⁵⁰ These birds hold special cultural significance for the Native Hawaiian community, and their extinction would prevent Native Hawaiians from continuing certain traditional practices.⁵¹ Beyond disease, Hawai‘i is already preparing for sea level rise, shore erosion, and increased natural disasters as the result of climate change.⁵²

Since these consequences directly impact the Native Hawaiian people, we must ensure that Native Hawaiian voices are included in discussions around climate change mitigation and adaptation. The Native Hawaiian community is uniquely equipped to address climate change because of our stewardship over the islands and its resources from time immemorial. Traditional Native Hawaiian society relied on the ahupua‘a system—which divided swathes of land beginning in the mountains and moving down to the shoreline—and loko i‘a for sustainable resource management. Today, Native Hawaiian organizations and OHA are revitalizing these practices.

⁴⁶ See generally Statement of Assistant Professor Malia Akutagawa before the U.S. Senate Committee on Indian Affairs (July 19, 2012), <https://www.indian.senate.gov/sites/default/files/upload/files/Malia-Akutagawa-testimony071912.pdf>.

⁴⁷ Haunani H. Kane et al., *Vulnerability Assessment of Hawai‘i’s Cultural Assets Attributable to Erosion Using Shoreline Trend Analysis Techniques*, J. OF COASTAL RSCH. (May 2012).

⁴⁸ *Dengue in the US States and Territories*, CDC (Oct. 7, 2020), <https://www.cdc.gov/dengue/areaswithrisk/in-the-us.html>.

⁴⁹ *Hawai‘i’s Changing Climate Briefing Sheet, 2010*, UNIV. OF HAW. SEA GRANT (2010), https://www.soest.hawaii.edu/coasts/publications/ClimateBrief_low.pdf.

⁵⁰ Claire Caulfield, *Is Climate Change Affecting the Spread of Disease?*, HONOLULU CIVIL BEAT (Mar. 23, 2020), <https://www.civilbeat.org/2020/03/is-climate-change-affecting-the-spread-of-disease/>; Brittany Lyte, *Deadly Mosquitoes are Killing off Hawai‘i’s Rare Forest Bird*, HONOLULU CIVIL BEAT (Dec. 10, 2019), <https://www.civilbeat.org/2019/12/deadly-mosquitoes-are-killing-off-hawaiis-rare-forest-birds/>.

⁵¹ Ashlyn Ku‘uleialoha Weaver, *‘Iwi in Hawaiian Culture*, MAUI FOREST BIRD RECOVERY PROJECT, <https://mauiforestbirds.org/cultural-significance/> (last visited Dec. 17, 2020).

⁵² See, e.g., HAWAI‘I CLIMATE CHANGE MITIGATION AND ADAPTATION COMM’N, *supra* note 45.

The federal government must work with the Native American community to incorporate Native wisdom and stewardship principles in any comprehensive federal plan to address climate change. Although climate change is a global, existential problem, it must be addressed, in part, through place-based, traditional conservation and agricultural practices to restore environmental health, which then aggregate to large scale mitigation. We urge this Subcommittee to work on solutions that support Indigenous-led programs and practices that have proven successful in land and water management as well as the preservation of cultural and natural resources.

We also urge this Subcommittee to reserve a specially designated seat for Native Hawaiians on any federal climate change advisory committees or management groups related to Hawai‘i and our surrounding areas. OHA already serves as a co-manager for Papahānaumokuākea Marine National Monument, a partnership which has successfully infused the unique Native Hawaiian perspective into federal resource management and policy for the 582,578-square-mile conservation area. We further urge Congress to establish additional federal programs to support food security; disaster preparedness, mitigation, and recovery; and future Native science, technology, education, and math (STEM) professionals.

III. Trust Responsibility Owed to All Native Americans

Native Hawaiians are owed the same trust responsibility as any other Native American group. To meet this obligation, Congress—oftentimes through the bipartisan work of this Subcommittee and its Members—has created policies to promote education, health, housing, and a variety of other federal programs that support Native Hawaiian self-determination. Similar to American Indians and Alaska Natives, Native Hawaiians have never relinquished our right to self-determination despite the United States’ involvement in the illegal overthrow of Queen Lili‘uokalani in 1893 and the dismantling of our Hawaiian government. In fact, over 150 Acts of Congress consistently and expressly acknowledged or recognized a special political and trust relationship to Native Hawaiians based on our status as the Indigenous, once-sovereign people of Hawai‘i. Among these laws are the Hawaiian Homes Commission Act, 1920 (42 Stat. 108) (1921), the Native Hawaiian Education Act (20 U.S.C. § 7511) (1988), the Native Hawaiian Health Care Improvement Act (42 U.S.C. § 11701) (1988), and the Hawaiian Homelands Homeownership Act codified in the Native American Housing Assistance and Self Determination Act, Title VIII (25 U.S.C. § 4221) (2000).

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

responsibility fully and equally to all Native Americans, including American Indians, Alaska Natives, and Native Hawaiians.

A. Consultation Policies as Part of the Foundation of Self-Determination

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

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

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

B. Support federal programs for Native Hawaiians

While consultation is critical to self-determination, so is the provision of the resources and governmental programs to provide for the health, housing, education, and economic well-being of Native Hawaiians. The Hawai'i congressional delegation, including Representative Case, have

ensured that Congress continues to fund our essential federal programs annually; however, three of these acts must now be reauthorized, strengthened, and expanded by the Congress.

Over the past several decades, the Native Hawaiian Health Care Improvement Act (NHHCIA), the Hawaiian Homelands Homeownership Act (HHHA), and the Native Hawaiian Education Act (NHEA) have enabled Native Hawaiians to receive culturally appropriate services relating to health, housing, and education. These Acts have delivered services to tens of thousands of Native Hawaiians through diverse programs including revitalizing the Native Hawaiian language, building and maintaining homes and infrastructure, and providing telehealth services during a global pandemic. Further, the Native Hawaiian Revolving Loan Fund (NHRLF)—administered by OHA—and the U.S. Treasury’s Community Development Financial Institutions Fund’s (CDFI Fund’s) Native American CDFI Assistance Program have supported the emergence and growth of thousands of Native Hawaiian businesses. We urge this Subcommittee to support the reauthorization, strengthening, and expansion of these programs to further empower Native Hawaiian self-determination.

1. Native Hawaiian Health Care Programs

Native Hawaiian self-determination in health care means that Native Hawaiians have the power to choose the health care services most needed in their communities. Similar to our Native relatives on the continent, Native Hawaiians face disproportionate threats to our physical and mental health in a variety of areas, as mentioned in Section II.A. above.

To address the major health disparities then apparent, Congress enacted the precursor to NHHCIA in 1988, which was most recently reauthorized in 2009. The NHHCIA established the Native Hawaiian Health Care program, which funds the Native Hawaiian Health Care Systems administered by Papa Ola Lōkahi (POL). Together the five Systems on the islands of Kaua‘i, O‘ahu, Maui, Moloka‘i, and Hawai‘i provide primary health care, behavioral health, and dental services. They also offer health education to manage disease, health related transportation, and other services. The Systems serve tens of thousands of patients across the State each year. NHHCIA also established the Native Hawaiian Health Scholarships Program for Native Hawaiians pursuing careers in designated health care professions. It supports culturally appropriate training and the placement of scholars in underserved Native Hawaiian communities following the completion of their education. More than 300 scholarships have been awarded through this program and more than 98 percent of program alumni are now licensed and practicing in Hawai‘i.

According to POL, the pandemic has highlighted the urgent need for several amendments to the NHHCIA. OHA and POL have advocated for increased funding to the Systems and removing the matching requirements in parity with other Native health care centers; making permanent the provision in the American Rescue Plan that provided 100 percent of the Federal Medical Assistance Percentage (FMAP) to the Systems; expanding Federal Tort Claims Act coverage to POL, the Systems, and their employees in parity with other Native health care centers; allowing federal program funding to be used to collect and analyze health and program data which currently falls under the 10 percent administrative cost cap for the program; allowing the Systems to be eligible for supplemental federal funding streams; and providing a tax exemption for the scholarships program. Additionally, POL has established partnerships with other organizations to reach Native Hawaiians living across the country, offering capacity building, technical assistance,

and workshops to promote holistic health and well-being as Native Hawaiians. Through POL's partnerships, it can care for all Native Hawaiians, including those unable to access the Systems in Hawai'i. We urge the Subcommittee to support increased funding for, reauthorization of, and expansion of the NHHCIA, including these amendments so that POL and the Systems may be able to expand what they can accomplish.

2. Native Hawaiian Housing Programs

The HHA facilitates Native Hawaiian self-determination by supporting part of the Department of Hawaiian Home Lands' (DHHL's) mission—to develop and deliver land and housing to Native Hawaiians. Congress enacted the HHA in 2000. The HHA established the Native Hawaiian Housing Block Grant (NHHBG) program and the Section 184A Loan Guarantees for Native Hawaiian Housing. The NHHBG provides much needed funding to DHHL to deliver new construction, rehabilitation, infrastructure, and various support services to beneficiaries living on DHHL lands. The 184A Loan Guarantee program provides eligible beneficiaries with access to construction capital on DHHL lands by fully guaranteeing principal and interest due on loans. The program currently serves owner-occupant single family dwellings on the DHHL lands. Together, these programs help DHHL to carry out the vision of our Prince Jonah Kūhiō Kalaniana'ole, who as the then-Territory of Hawai'i's Congressional Delegate 100 years ago, spearheaded one of the first Acts of Congress implementing the trust responsibility to Native Hawaiians.

Like other Native communities, housing has become even more vital during this pandemic. Prior to the pandemic, Native Hawaiians faced one of the most expensive housing markets in the country. In fact, Native Hawaiians made up nearly half of the homeless population on the island of O'ahu,⁵³ whose population accounts for approximately two thirds of all State residents. To address housing needs, DHHL has used NHHBG funds for emergency rental assistance for eligible Native Hawaiians; rental subsidies for lower income elderly; rehabilitation of homes primarily for elderly or disabled residents; homeownership opportunities for lower income working families; and homeownership and rental counseling to address barriers experienced by Native Hawaiians.

Despite these efforts, DHHL estimates that they would need \$728 million over the next two fiscal years to develop a minimum of 1,700 homestead lots statewide, provide needed loan financing, and carry out rehabilitation projects by which the general welfare and conditions of Native Hawaiians can be improved. Unfortunately, even that sum is not enough to provide every DHHL applicant with a parcel. We urge this Subcommittee to support increased funding for, reauthorization of, and expansion of the NHHBG and 184A Loan Guarantee programs as well.

3. Programs Supporting the Economic Well-Being of Native Hawaiians

Economic well-being and opportunity are central to the ability of any community to exercise self-determination. Again, the pandemic has made the economic well-being and outlook for Native Hawaiians more difficult as discussed in Section II.A. above.

⁵³ OFFICE OF HAWAIIAN AFFAIRS, *supra* note 9 at 2.

Fortunately, several economic development and access to capital programs are already in place to serve Native Hawaiian communities. The Native American CDFI Assistance Program and NHRLF are both widely recognized as being effective. Continued support for these and similar programs are critical to minimizing the negative economic impacts of this pandemic. For example, in its nearly three decades in operation under OHA's administration, NHRLF has closed around 2,700 loans valued at more than \$63 million of lending to Native Hawaiian businesses and individuals. With this in mind, OHA asks the Subcommittee for its support of Native CDFIs and for programmatic fixes to NHRLF, including ending the demonstration status of the program, removing restrictions on outdated unallowable loan activities, and reducing the Native Hawaiian ownership percentage requirement from 100 to 50.

In spite of these successes, more programs to support the economic well-being of Native Hawaiians are needed. OHA asks that the Subcommittee explore opportunities to promote economic development and access to capital in Native communities. OHA also asks that the Native Hawaiian community be included in these kinds of programs in the future.

4. Native Hawaiian Education Programs

The self-determination framework supports the reclamation and revitalization of Native identity through culture-based education and language programs supported through programs like the NHEA. Congress passed the NHEA in 1988 and most recently reauthorized the Act in 2015. The NHEA established the Native Hawaiian Education Program (NHEP). This program offers competitive grants to fund the development of innovative education programs to assist Native Hawaiians and to supplement and expand Native Hawaiian cultural-based education. Evidence shows that educating students through the use of their own culture and language leads to better academic and behavioral outcomes for students.

In 2011, Ms. Nāmaka Rawlins of 'Aha Pūnana Leo, a renowned 'Ōlelo Hawai'i (Hawaiian language) immersion preschool and the oldest Native American language immersion non-profit in the United States, testified before the Senate Committee on Indian Affairs about the successes of their preschool and the language immersion movement generally. At the time, Ka Haka 'Ula o Ke'elikōlani at the University of Hawai'i at Hilo offered the only Ph.D. in the world that focused solely on Native language and culture revitalization.

This Hawaiian language college provides curriculum for various levels of immersion education, including a laboratory school for Kindergarten through 12th Grade. Their rate of success is stunning. Hawaiian immersion laboratory school had a 100 percent high school graduation rate and an 80 percent college entrance rate. These rates have remained steady for more than ten years, supporting the conclusion that culture-based education and Indigenous language programs are reliably and overwhelmingly successful.

Moreover, Native Hawaiian language advocates like Ms. Rawlins and other pioneers in 'Ōlelo Hawai'i education have played critical roles in Native language revitalization efforts. They are ambassadors of aloha throughout Indian Country, even serving in leadership positions at the National Indian Education Association (NIEA) and affiliated tribal organizations intent on revitalizing their Native languages.

The successes of the Native Hawaiian education movement are understood throughout the community. According to conversations with the Native Hawaiian Education Council, in 2017 and 2018 alone, the 38 NHEP grantees served 95,458 individuals, including 74,311 students, 18,429 parents, and 2,718 teachers. They surpassed their target number for participants by approximately 65 percent. Additionally, all 38 grantees targeted serving Native Hawaiian communities and formed almost 700 strategic partnerships with schools, government agencies, or cultural organizations to expand the number served and to increase the overall impact of their programs.

Despite the great work of NHEP grantees in recent years, the effects of the pandemic still threaten the survival of some grantees and widen existing disparities between Native Hawaiian students and their non-Hawaiian counterparts. While much needed assistance was included for the NHEP grantees in the American Rescue Plan, we urge the Subcommittee to ensure that Native Hawaiian programs and service providers be included in all future federal relief efforts, that the NHEA be reauthorized, that its scope be expanded, and that its annual funding be increased.

IV. Ensure Parity in the Treatment of All Native Americans, Including American Indians, Alaska Natives, and Native Hawaiians

Again, through more than 150 Acts, Congress has established its trust responsibility to Native Hawaiians based on our status as the Indigenous, once-sovereign people of Hawai‘i. As a result of those Acts, this Subcommittee has the duty to ensure that the federal government implements the trust responsibility fully and equally to all Native Americans, including Native Hawaiians. While the federal trust responsibility may be implemented differently to Native Hawaiians because of our unique history with the United States, that trust responsibility nonetheless still exists.

As a Native Hawaiian leader elected to ensure the well-being of the Native Hawaiian community, I urge this Subcommittee and the Congress to ensure that Native Hawaiians have the same opportunities as other Native Americans to engage in self-determination. OHA asks you to empower all Native Americans, including Native Hawaiians, with the same opportunity to choose their own path—understanding that each tribe, band, nation, pueblo, village, or community is best served through their unique, self-determined means. This necessarily includes extending access to federal programs implementing the trust responsibility to Native Hawaiians where appropriate, and where consistent with Native Hawaiians’ unique history and evolving political relationship with the United States.

OHA celebrates our involvement with the Alaska Federation of Natives, the National Congress of American Indians, and the NIEA, and we pledge to support and work with our Native cousins across the continent and in Alaska because all of us—American Indians, Alaska Natives, and Native Hawaiians—are strongest when we stand and work together.

In closing, I wish to express my appreciation and gratitude to Chair Leger Fernandez, Ranking Member Young, and Representative Case for inviting me to testify. It has been an honor to have had this opportunity to address you and this Subcommittee.

I stand ready to assist you in accomplishing this most important work, both now and in the future. A hui hou. Until we meet again.