United States Senate Committee on Indian Affairs Oversight Hearing on Native Communities' Priorities for the 119th Congress

Testimony of Joseph Kūhiō Lewis, Chief Executive Officer, Council for Native Hawaiian Advancement

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Mahalo nui loa, Chair Murkowski, Vice Chair Schatz, and esteemed members of the Senate Committee on Indian Affairs for convening this hearing on Native priorities.

Founded in 2001, the Council for Native Hawaiian Advancement (CNHA) is a member-driven, 501(c)(3) nonprofit organization dedicated to advancing the cultural, economic, political, and community development of Native Hawaiians throughout the United States. As a Native Community Development Financial Institution, a HUD-Certified Housing Counseling Agency, and a National Intermediary, CNHA fosters greater opportunities for economic growth and self-sufficiency through three primary divisions: Community Programs, Kāko'o Maui, and Kilohana, a tourism-focused initiative.

CNHA takes pride in advocating for some of the most pressing issues facing the Native Hawaiian Community today, including the rising cost of living, lack of affordable housing, access to economic prosperity, and disaster resiliency in light of the 2023 Maui wildfires. Additionally, we are deeply concerned about these issues contributing to the increasing outmigration of Native Hawaiians from their homeland.

CNHA is honored to provide insight into the needs of the Native Hawaiian Community and our federal trust responsibility. Mōhala i ka wai ka maka o ka pua – Unfolded by the water are the faces of the flowers. ¹ Just as flowers thrive where there is water, so do communities flourish when they have necessary resources and support.

We respectfully urge the Committee to support equitable funding and programmatic opportunities for the Native Hawaiian Community; permanent reauthorization of existing Native Hawaiian legislation; and development of meaningful consultation policies that ensure Native Hawaiian voices are heard in federal decision-making.

¹ Mary Kawena Pukui, <u>'Ōlelo No'eau: Hawaiian Proverbs & Poetical Sayings</u> #2178 (1983).

Overview of the Native Hawaiian Community

Native Hawaiians are the Indigenous people of the Hawaiian Islands with a unique culture, language, and tradition. Estimates of up to one million Native Hawaiians built a thriving, complex society capable of sustainably supporting itself in one of the most remote locations in the world. Contact with European settlers beginning in 1778 devastated the Native Hawaiian population due to the introduction of illnesses such as measles, smallpox, polio, tuberculosis, and venereal diseases. By 1920, the Native Hawaiian population had dwindled to just under 24,000.² This rapid decline, coupled with a loss of culture, language, land, and political leadership, pushed Native Hawaiians to the lowest socioeconomic levels in their homeland. After generations of revitalization efforts, community resilience, and political advocacy, the Native Hawaiian Community has been slowly recovering from the impacts of these travesties. Yet, there is still much work to be done to overcome past, present, and future struggles.

Compared to other groups, Native Hawaiians face some of the greatest disparities. In Hawai'i, Native Hawaiians have the shortest life expectancy, are the most likely to live below the poverty line, and experience significantly higher rates of unemployment, impoverished conditions, and incarceration.³ Native Hawaiians are the only ethnic group in Hawai'i with consistently more

people leaving than entering the islands over the past fifteen years.⁴

Today, there are over 650,000 Native Hawaiians living across the globe. The highest concentration of Native Hawaiians is in Hawai'i, with more than 20% of Hawai'i residents identifying as Native Hawaiian.⁵ The 2020 Census identified that, for the first time, a majority of Native Hawaiians live outside of Hawai'i.⁶ As shown in the table to the right, Nevada, California, Washington State, and Utah all have large concentrations of Native Hawaiians.⁷

<u>Selected Counties with Large Populations of</u> <u>Native Hawaiian Residents</u>	
County	Number of Native Hawaiians
Honolulu County, HI	200,455
Hawaii County, HI	59,320
Maui County, HI	39,592
Clark County, NV	23,192
Los Angeles County, CA	15,983
San Diego County, CA	10,965
King County, WA	7,867
Pierce County, WA	6,648
Sacramento County, CA	5,378
Salt Lake County, UT	3,846

^{2015),} https://www.pewresearch.org/fact-tank/2015/04/06/native-hawaiianpopulation/.

³ Noreen Mokuau et al., <u>Challenges and Promises of Health Equity for Native Hawaiians</u> (2016).

⁴ Shawn Malia Kana'iapuni et al., <u>Ka Huaka'i Native Hawaiian Education Assessment</u> (2021)

https://www.ksbe.edu/ka_huakai/.

⁵ America Counts Staff "Hawaii Added More Than 94,000 People Since 2010" U.S. Census Bureau (Aug. 25, 2021) https://www.census.gov/library/stories/state-by-state/hawaii-population-change-between-census-decade.html#raceethnicity.

⁶ Native Hawaiian Research Hui "New census data confirms more Native Hawaiians reside on the continent than in Hawai'i" Office of Hawaiian Affairs (Sep. 22, 2024) https://www.oha.org/news/new-census-data-more-native-hawaiians-reside-continent/.

⁷ Brittany Rico, Joyce Key Hahn, and Paul Jacobs "Chuukese and Papua New Guinean Populations Fastest Growing Pacific Islander Groups in 2020" U.S. Census Bureau (Sep. 21, 2023)

https://www.census.gov/library/stories/2023/09/2020-census-dhc-a-nhpi-population.html.

Federal Trust Responsibility for the Native Hawaiian Community

Congress has consistently and expressly acknowledged a special political and trust relationship with Native Hawaiians based on our status as the Indigenous, once-sovereign people of Hawai'i. These are the same trust principles that Congress has recognized is owed to all Native peoples of the United States. The federal trust relationship with the Native Hawaiian Community was established through the illegal annexation of the Kingdom of Hawai'i⁸ and reaffirmed by the 1959 Admission Act.⁹ The federal trust responsibility has been included in more than 150 legislative measure, including but not limited to:

- Hawaiian Homelands Homeownership Act (HHHA)¹⁰
- Native Hawaiian Health Care Improvement Act (NHHCIA)¹¹
- Native Hawaiian Education Act (NHEA)¹²
- Native American Graves Protection and Repatriation Act (NAGPRA)¹³
- National Historic Preservation Act (NHPA)¹⁴
- Native American Languages Act (NALA)¹⁵
- Native American Tourism and Improving Visitor Experience (NATIVE) Act¹⁶

Congress determines which Native groups are receive a formal trust responsibility, while the Executive Branch administer the enacted programs and policies to fulfill this obligation. American Indians and Alaska Natives have tribal governments to help the federal government to administer these programs. In lieu of a central Native Hawaiian government, the federal government works with Native Hawaiian Organizations and the Native Hawaiian Community.

⁸ Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States, H.R.J. Res. 55-51, 55th Cong., 30 Stat. 750 (1898).

⁹ Admission Act of 1959, Pub. L. No. 86-3, 73 Stat. 4.

¹⁰ Codified as Title VIII of the Native American Housing and Self-Determination Act (NAHASDA) (25 U.S.C. 4221 et seq.) (2000). Finds that "the United States has a special responsibility for the welfare of the Native peoples of the United States, including Native Hawaiians" and "under the treatymaking power of the United States, Congress had the constitutional authority to confirm a treaty between the United States and the government that represented the Hawaiian people, and from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887."

¹¹ Native Hawaiian Health Care Improvement Act (42 U.S.C. 11701 et seq.) (1988). Establishes a program to maintain and improve Native Hawaiian health "[i]n furtherance of the trust responsibility for the betterment of the conditions of Native Hawaiians" and acknowledges that "[t]his historical and unique legal relationship has been consistently recognized and affirmed by the Congress through the enactment of Federal laws which extend to the Hawaiian people the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities."

¹² Native Hawaiian Education Act (20 U.S.C. 7511-7517) (1988). Recognizes that "Congress does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once sovereign nation as to whom the United States has established a trust relationship" and "the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives."

¹³ Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.).

¹⁴ National Historic Preservation Act (16 U.S.C. 470 et seq.).

¹⁵ Native American Languages Act (25 U.S.C. 2901 et seq.).

¹⁶ Native American Tourism and Improving Visitor Experience (NATIVE) Act (25 U.S.C. 4351 et seq.).

Congress has defined the term "Native Hawaiian" in multiple statutes. The Native American Housing Assistance and Self-Determination Act (NAHASDA) defines Native Hawaiian as "any individual who is (A) a citizen of the United States; and (B) a descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by (i) genealogical records; (ii) verification by kupuna (elders) or kama'āina (long-term community residents); or (iii) birth records of the State of Hawaii."¹⁷

Native Hawaiian Organizations often refers to any organization that serves and represents the interests of the Native Hawaiian Community; has a primary and stated purpose for the provision of service to the NHC; and has expertise in Native Hawaiian affairs. Native Hawaiian Community often refers to the distinct Native Hawaiian indigenous political community that Congress has recognized and for which Congress has implemented a special political and trust relationship. Importantly, none of these definitions have a geographic restriction to the State of Hawai'i. Federal policies must take into account that the Native Hawaiian Community exists throughout the country and Native Hawaiians live in every state.

<u>Federal Priorities that Advance the Cultural, Economic, and Political Well-Being of the</u> <u>Native Hawaiian Community</u>

Consistent with the special and political trust relationship, the federal government owes a duty of care to the Native Hawaiian Community. As detailed below, the Council for Native Hawaiian Advancement respectfully urges the Committee to support equitable funding and programmatic opportunities for the Native Hawaiian Community; permanent reauthorization of existing Native Hawaiian legislation; and development of meaningful consultation policies that ensure Native Hawaiian voices are heard in federal decision-making.

Equitable Funding and Programmatic Opportunities for the Native Hawaiian Community

Congress has authorized a patchwork of programs to deliver and coordinate services to Native Hawaiian communities. However, our experience is that when Native Hawaiians are not specifically identified and funding is not set aside, the needs of our communities are more likely to be overlooked or excluded. *We urge this Committee to strengthen and expand legislation to achieve parity with other Native American groups and further support the advancement of cultural, economic, and political well-being of Native Hawaiians.* Native Hawaiian-serving organizations should be empowered and utilized as an effective service-delivery system to the extent possible. If certain funding must ultimately pass through State and County agencies, the trust responsibility to Native Hawaiians should be specifically identified and acknowledged.

One example of existing equitable funding is the Native American Languages Act (NALA). Language revitalization is a cornerstone to cultural perpetuation for Indigenous communities. NALA established federal policy in support of the survival of, and use as the medium of education, all Native American languages including 'Ōlelo Hawai'i. Through Hawaiian language funding, programs like 'Aha Pūnana Leo have been able to successfully provide immersion programs

¹⁷ 25 U.S.C. § 4221(9)

growing the next generation of fluent 'Ōlelo Hawai'i speakers. We urge this Committee to increase funding for Native languages and enable Native American language medium pathways in all federally supported educational programs.

One opportunity for increased funding equity is programs that affect the economic well-being of Native Hawaiians. There are several economic development and access to capital programs that serve Native Hawaiians, including the Department of the Treasury, Native American Community Development Financial Institutions, Minority Depository Institutions, and the Native Hawaiian Revolving Loan Fund. The Native Hawaiian Community has also benefitted from the Treasury's Emergency Rental Assistance, Homeowner Assistance Fund, Capital Projects Fund and Small Business Credit Initiative, Emergency Capital Investment Program, Rapid Response Program, and Native American CDFI Assistance Program. *We urge this Committee to support expanded funding for these critical initiatives integral to improving economic opportunities for Native Hawaiians*.

Another opportunity for greater programmatic equity is the inclusion of Native Hawaiians in existing protections for Indigenous women and girls. Native Hawaiian women and girls experience violence at disproportionate rates.¹⁸ Hawai'i has the eighth highest rate of missing persons per capita, with the reported cases of missing children being 77% female and 84% Native Hawaiian.¹⁹ However, Native Hawaiians have largely been left out of the federal policy discourse and resource allocation to address violence against Indigenous communities. 2022 was the first year Native Hawaiians were formally recognized by a U.S. President as belonging to Indigenous populations disproportionately impacted by interpersonal and systemic violence that leads to Native Women and girls going missing and being murdered. *We urge the Committee to include Native Hawaiians in federal policy initiatives, funding, and legislation aimed at responding to the crisis of missing and murdered Indigenous women and girls and violence against women.*

Finally, it is critical that Native Hawaiians are included in data disaggregation efforts throughout all federal government initiatives. Native Hawaiians are often grouped alongside Asian Americans and Other Pacific Islanders in a way that obfuscates relevant Native Hawaiian statistics. This is also true when a catch-all multiracial category is used, as Native Hawaiians are more likely than other groups to identify with an additional race or ethnicity group.²⁰ We urge this Committee to promote data disaggregation efforts across federal race and ethnicity standards.

Permanent Authorization of Existing Native Hawaiian Legislation

In addition to the inclusion on Native Hawaiians in larger bills, Congress has also utilized programs specific to the Native Hawaiian Community through federally funded Native Hawaiian-serving organizations, such as the Office of Hawaiian Affairs, the Department of Hawaiian Home Lands,

¹⁸ Missing and Murdered Native Hawaiian Women and Girls Task Force Report. https://www.oha.org/wp-content/uploads/MMNHWG-Report_Web.pdf.
¹⁹ Id.

²⁰ Joshua Quint et al., "The Hawai'i NHPI Data Disaggregation Imperative: Preventing Data Genocide Through Statewide Race and Ethnicity Standards" Hawaii Journal of Health & Social Welfare (Oct. 2023). https://pubmed.ncbi.nlm.nih.gov/37901675/.

Papa Ola Lōkahi, the Native Hawaiian Health Care Systems, and the Native Hawaiian Education Council to deliver and coordinate services to Native Hawaiian communities. Over the past several decades, the HHA, the NHHCIA, and the NHEA has provided resources to the Native Hawaiian community through a variety of programs and services. *We urge this Committee to permanently reauthorize all of these Acts*.

Firstly, the Department of Hawaiian Home Lands (DHHL) is a state agency created by federal statute with the mission to develop and deliver land and housing to Native Hawaiians. In 2000, Congress enacted the Hawaiian Homelands Homeownership Act (HHHA) in 2000, establishing the Native Hawaiian Housing Block Grant program and the Section 184A Loan Guarantees for Native Hawaiian Housing through NAHASDA. These programs deliver funds for new construction, rehabilitation, infrastructure, and various support services. DHHL has also been able to use these 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.

These is a growing housing crisis in Hawai'i. The average price for a single-family home in Hawai'i is \$843,185.²¹ In 2022, home buyers needed to earn nearly 180% of the state's median income (or \$150,000 per year) to afford the median home.²² Of the 28,155 Native Hawaiians in rental united in Hawai'i, 54.9% of them are cost-burdened and paying more than 30% of their income to rent. On O'ahu, 42% of individuals included in the annual Point-in-Time count of unsheltered homeless were Native Hawaiians.

The housing crisis is also true for many DHHL beneficiaries. According to DHHL's recently completed 2020 Beneficiary Study, 56.8% of the nearly 10,000 lessees or beneficiary families who received homestead awards are currently below the 80% HUD AMI. Of applicants or beneficiary families waiting to receive a homestead award, 51% of the over 28,000 applicants are below the 80% HUD AMI, an increase from 45% in 2014. In addition, about 16% of applicants below the HUD's 80% of Area Median Income (AMI). reported that they receive Section 8 and 7% reported that they received rental assistance. The impacts of the pandemic are expected to further exacerbate these needs. *We urge this Committee to support permanent authorization, increased funding for, and expansion of the NHHBG and 184A Loan Guarantee programs*.

Secondly, similar to our Indigenous relatives on the continent, these are significant health disparities amount Native Hawaiian populations. In response to these disparities, Congress enacted the Native Hawaiian Health Care Improvement Act (NHHCIA) in 1988. The NHHCIA established the Native Hawaiian Health Care program, which funds the Native Hawaiian Health Care Systems administered by Papa Ola Lōkahi. The Systems provide primary health care, behavioral health,

²¹ Hawaii Housing Market, Zillow. https://www.zillow.com/home-values/18/hi/.

²² Stewart Yerton, "It's Actually More Expensive To Buy A Home In Hawaii These Days Than You Thought" Honolulu Civil Beat (June 28, 2023) https://www.civilbeat.org/2023/06/its-actually-more-expensive-to-buy-a-home-in-hawaii-these-days-than-you-thought/.

and dental services on Kaua'i, O'ahu, Maui, Moloka'i, and Hawai'i, as well as health education, health-related transportation, and other services. The NHHCIA also established the Native Hawaiian Health Scholarship Program, which has awarded more than 300 scholarships to Native Hawaiians pursuing careers in designated health care professions, supported culturally appropriate training, placed scholars in underserved Native Hawaiian communities.

There is also an urgent need for several amendments to the NHHCIA. This includes:

- Removing the matching requirements applied to the Systems for parity with other Native health care providers;
- Making the NHHCSs eligible for 100% of the Federal Medial Assistance Percentage (FMAP) as well as the Prospective Payment System (PPS) reimbursement rate;
- Expanding Federal Tort Claims Act to Papa Ola Lōkahi, the Systems, and their employees in parity with other Native health care providers;
- Allowing federal program funding to be used to collect and analyze health and program data which currently falls under the ten percent administrative cost cap for the program;
- Allowing the Systems to be a specific eligibility group for supplemental federal funding streams; and
- Providing a tax exemption for the Native Hawaiian Health Scholarship Program.

We urge the Committee to support permanent reauthorization of, increased funding to, and technical amendments to the NHHCIA to address avoidable inequalities and health care disparities.

Finally, the Native Hawaiian Education Act has been monumental in providing resources to a collective of educational organizations supporting the unique needs of Native Hawaiian students. The program has helped address gaps in funding that state and private sources have historically been unable to adequately meet. A 2021 profile analysis of NHEP grantees from 2010 through 2018 cohorts reported data from grantee programs and services to Native Hawaiian communities are student, parent, and teacher focused. In 2017 and 2018, NHEP grants served 98,996 participants (including 77,808 students, 18,429 parents, and 2,759 teachers). 100% of grantee programs have been targeting Native Hawaiians and 42% target low-income populations. NHEA-funded programs have been agile and innovative to provide a continuum of services for students and their families despite receiving little to no supplemental funding from the Coronavirus Aid, Relief, and Economic Security Act via the State.

There is also an urgent need for several amendments to the NHEA. This includes:

- Clarification that the 5 percent limitation in section 6205(b) of the Elementary and Secondary Education Act on the use of funds for administrative purposes shall apply only to direct administrative costs.
- Authorization to use NHEA funds for construction, renovation, and modernization of any public elementary school, secondary school, or structure related to a public elementary school or secondary school that serves a predominantly Native Hawaiian student body.
- Priority funding recommendations to enable the U.S. Department of Education to provide grant funding aligned with the needs and priorities for improving educational outcomes for

Native Hawaiians by: a. determining funding priorities for each grant competition based on the data-driven priority recommendations submitted to the Department by the Native Hawaiian Education Council through its annual report; b. identifying educational needs that remain unmet through a transparent, evidence-based process; and c. developing a peer review process for each grant competition, including identifying reviewer criteria and culturally-appropriate training, and developing an application scoring rubric. Fulfillment of these requests would enable Native Hawaiian Education Program (NHEP) recipients to further bolster Native Hawaiian education.

We urge the Committee to support permanent reauthorization of, increased funding to, and technical amendments to the NHEA.

Development of Meaningful Consultation Policies

Executive Order 13175 outlines the underlying principles for formulating or implementing policies with implications for a native community.²³ In application to the Native Hawaiian Community, this policy recognizes that the United States (1) respects and furthers its special political and trust relationship with the Native Hawaiian Community; (2) must continue to work with the Native Hawaiian Community on a government-to-sovereign basis to address concerns related to self-governance, Native Hawaiian trust resources, and other Native Hawaiian rights; and (3) recognizes the right of the Native Hawaiian Community to self-government and supports Native Hawaiian sovereignty and self-determination.²⁴

Although the Native Hawaiian Community has not yet reorganized a central government, Congress' thoughtful inclusion of Native Hawaiians in legislation like NAGPRA and NHPA demonstrates that Native Hawaiians can be effectively included in the consultation process. However, Native Hawaiians are still largely omitted from consultation policies and processes across many federal agencies. While it is important for all agencies to develop consultation policies, we want to highlight the importance of meaningful dialogue with the Department of Defense.

The U.S. military is a prominent part of Hawaiian history and daily life. Approximately 46,500 acres of land across the State of Hawai'i is being used by the U.S. military, including Army, Navy, and Air Force bases and installations, with the largest being the 23,000 acres of Pōhakuloa Training Area on Hawai'i Island. Numerous events have made the Native Hawaiian Community dubious of the U.S. military's role as caretakers and stewards of the land they occupy. In recent memory, the 2004 Kaho'olawe UXO Clearance Project left 25% of the island with unexploded ordinances and unescorted access to these areas remains unsafe; the U.S. Navy Red Hill Bulk Fuel Tanks stored up to 250 million gallons of fuel and documented multiple leaks in O'ahu's major aquifer; and U.S. Space Force announced an estimated 700 gallons of diesel fuel spilled at the summit of Haleakalā. Multiple military land leases will be expiring this decade, providing the opportunity to renegotiate and improve the relationship between the Native Hawaiian Community and the U.S.

²³ Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, Nov. 6, 2000.

²⁴ "Requirement to Consult with the Native Hawaiian Community" U.S. Department of the Interior Office of Native Hawaiian Relations, https://www.doi.gov/hawaiian/requirement-consult-native-hawaiian-community.

Military. Given the significant historical and ongoing presence of military operations and activities in Hawai'i, we urge this Committee to support meaningful consultation between the Native Hawaiian Community and the U.S. military for any proposed undertakings that would impact the land or the people. This includes but is not limited to further study and remediation, oversight authority to ensure accountability and consultation, and increased funding to support clean-up efforts.

Finally, we would like to emphasize the importance of broad inclusion for the Native Hawaiian Community. Native Hawaiian migration to the continental United States has been happening for over two hundred years. Some Native Hawaiians were documented in the Pacific Northwest as early as 1787.²⁵ Another group of Native Hawaiians settled in a community near Salt Lake City in the 1880s called Iosepa.²⁶ The federal trust responsibility extends throughout the country. Given the increasing Native Hawaiian population throughout the United States, it is important that neither consultation policies nor definitions of Native Hawaiian Community are geographically bound to Hawai'i. *We urge the Committee to support consultation policies inclusive of all Native Hawaiians*.

The Council for Native Hawaiian Advancement appreciates the opportunity to present priorities for the Native Hawaiian Community for the 119th Congress to the Senate Committee on Indian Affairs. We look forward to working with the Committee and its members during this session to advance the interests of the Native peoples in accordance with the federal trust responsibility.

Me ka ha'aha'a,

Klūhiō Lewis Chief Executive Officer, CNHA

²⁵ Jean Barman and Bruce McIntyre Watson, <u>Leaving Paradise: Indigenous Hawaiians in the Pacific Northwest</u>, <u>1787-1898</u> (December 2021).

 <u>1787-1898</u> (December 2021).
 ²⁶ Benjamin C. Pykles, "Iosepa: Utah's Pacific Islander Pioneers" Utah Historical Society. https://history.utah.gov/iosepa-utahs-pacific-islander-pioneers/.