



Paradise Lost: the Controversy behind
US Federal Recognition of Native Hawaiians

“Grandson, all of this land someday will not be yours. That’s the reality of federal recognition. Someday, none of this will be yours. Welcome to America.”
- The Late Russell Means of the Oglala Sioux Nation

Photo Taken by Bricanah Gouveia

Paradise Lost: the Controversy Behind US Federal Recognition of Native Hawaiians

Brieanah Ka'ohinani Wylde Gouveia
Henry Fowler Policy Paper Competition

Since the overthrow of Hawai'i's last reigning monarch, Queen Lili'uokalani, in 1893, there has been no formal government-to-government relationship between a unified Native Hawaiian political organization and the United States government. However, on September 23, 2016, the Department of the Interior's Office of the Secretary passed a final ruling outlining the administrative process for Hawaiians to form their own government body, if they so choose.¹ Part of the DOI's motivation for condoning Native Hawaiian federal recognition and self-governance, after more than a century, is to improve the US's ability to fulfil its trust responsibilities to this indigenous group, set forth in legislation such as the Hawaiian Homes Commission Act of 1921 and the Hawai'i Statehood Admissions Act of 1959.² Should the Hawaiian community organize and establish such a government, it would make them eligible for similar political and legal status, immunity and benefits as are granted to the roughly 566 federally recognized Native American and Alaskan tribes today.³ This is particularly important to evade constitutional challenges based on racial discrimination that have been made against benefits and programs created solely for Native Hawaiians.

¹ Office of the Secretary. "Interior Department Finalizes Pathway to Reestablish a Formal Government-to-Government Relationship with the Native Hawaiian Community." Sept. 23, 2016. DOI. Retrieved from <https://www.doi.gov/pressreleases/interior-department-finalizes-pathway-reestablish-formal-government-government>

² "Frequently Asked Questions on Part 50 – The Final Ruling for Procedures Reestablishing a Formal Government-to-Government Relationship with the Native Hawaiian Community." Sept. 2016. DOI. Retrieved from https://www.doi.gov/sites/doi.gov/files/uploads/external_faqs_on_part_50_final_rule_9.21.16_final.pdf

³ "Federal and State Recognized Tribes," National Conference of State Legislatures (NCSL). March 25, 2017. Retrieved from <http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx#ak>

Some Hawaiians, specifically those in government or government-sponsored positions, see federal recognition and Hawaiian self-governance as a step in the right direction toward improving the lives of *Kanaka Maoli*.⁴ However, the majority are leery of federal recognition's fine print. This paper aims to address the historic, political, and social context behind why many Hawaiians disapprove of federal recognition and the establishment of a US sanctioned Hawaiian government, in addition to why decolonization and independence efforts are actually favored.

The purpose of this paper is to validate Native Hawaiian opposition to federal recognition, in hopes that an agreement can be reached in the near future between this indigenous community and the US that promotes the preservation of Native Hawaiian rights and interests, without the marginalizing and restrictive conditions of conventional federal recognition. First, the legal basis for federal recognition will be clarified by reviewing the complex timeline between the unlawful overthrow of the Hawaiian Kingdom in 1893 to its forced admission as the 50th State in 1959. Then, arguments supporting this legal basis for federal recognition will be discussed with respect to controversial challenges made and judicial decisions reached in court. Next, the history of prior attempts to institute federal recognition, specifically by former Hawai'i Senator Daniel Akaka will be examined. Lastly, Native Hawaiian opposition to federal recognition will be addressed through an analysis of the current standard of life of *Kanaka Maoli*, with a focus on two case studies concerning land disputes.

Legal Basis for Federal Recognition – the Unlawful Overthrow of the Kingdom of Hawaii

⁴ Translation: Native Hawaiians

The United States compromised Hawai‘i’s internationally recognized sovereignty,⁵ when John Stevens, US Minister of Foreign Affairs, organized a coup d’état against Queen Lili‘uokalani and her constitutional monarchy in 1893.⁶ As armed forces of the USS Boston occupied the shores of Hawai‘i, Stevens and the leader of the disingenuously titled Committee of Safety, Sanford Dole, instituted the Provisional Government of Hawai‘i at the American Consulate in Honolulu.⁷

Lorrin Thurston, son of a couple of the original New England missionaries to the islands, was founder of the Annexation Club, of which the Committee of Safety was a subsidiary. He is identified as the person who persuaded Stevens to organize the coup. Thurston believed that Hawaii should be annexed as a territory to the US. He saw this a strategic measure for American plantation owners on the islands to circumvent sugar import tariffs, so Hawaiian sugar could be subsidized and compete fairly with American sugar on the mainland.⁸

In her memoir, *Hawai‘i Story*, the Queen discloses why she relinquished her power, temporarily, and pleads to the US President at the time, Benjamin Harrison, to quickly disband the US Minister and his criminal regime. She states:

This action on my part was prompted by three reasons: The futility of conflict with the United States; the desire to avoid violence, bloodshed, and the destruction of life and property; and the certainty which I feel that you [President Harrison] and

⁵ Kehaulani Kauanui. “Precarious Positions: Native Hawaiians and US Federal recognition,” in *Recognition, Sovereignty Struggles and Indigenous Rights in the United States*. Edited by Amy Den Ouden and Jean O’Brien. Chapel Hill: University of North Carolina Press. 2013: 329, footnote 2.

⁶ The undermining of executive power during the Queen’s brother’s reign, King David Kalakaua, a few years before her, through the forced Bayonet Constitution, began this agenda by white plantation owners and US politicians to bring Hawai‘i under US control. In her memoir, Queen Liliuokalani writes: “They [US missionaries, other foreign residents, and public officials] were not grateful for a prosperity which must sooner or later, while enriching them, also elevate the masses of the Hawaiian people into a self-governing class, and depose them from that primacy in our political affairs which they chiefly valued. They became fiercely jealous of every measure which promised to benefit the native people, or to stimulate their national pride. Every possible embarrassment and humiliation were heaped upon my brother [King David Kalakaua]. And because I was suspected of having the welfare of the whole people also at heart. . . I must be made to feel yet more severely that my kingdom was but the assured prey of these ‘conquistadores’.” Pages 233-34. However, for the purpose of this paper, I am picking up at the 1893 coup.

⁷ Sarah Vowell. *Unfamiliar Fishes*. New York: Riverhead Books. 2011: 207.

⁸ Sarah Vowell, *Unfamiliar Fishes*: 204.

your government will right whatever wrongs may have been inflicted on us in the premises.⁹

Dole's provisional government and Thurston's goals of annexation were initially favored by Harrison. Fortunately for Lili'uokalani, Harrison was soon after succeeded by President Grover Cleveland, an anti-expansionist who openly and strongly opposed Steven's actions. Cleveland, rejected propositions of annexation, calling the coup "an act of war," and sent Commissioner James Blount to the islands to investigate.¹⁰

This scenario prompted thousands of Kanaka Maoli to form political organizations to defend their Queen's authority and their rights to independence. The largest group, Hui Hawai'i Aloha 'Āina, poorly translated as the Hawaiian Patriotic League, and its sister branch, compiled signatures from its thousands of members opposing the overthrow. In one of their pleadings the group wrote:

The fate of our little kingdom and its inhabitants is in your [Commissioner James Blount] hands...they [Kanaka Maoli] are simply waiting, in their simple faith in the generosity and honor of the most liberal and honorable Government of the world; and they expect justice, id est, restoration of their legitimate sovereign.¹¹

In response, President Cleveland ordered the Commissioner to ask Dole to dissolve the Provisional Government of Hawai'i. Cleveland respected the authority of Queen Lili'uokalani and urged the constitutional monarchy be reinstated under her influence.¹² However, when it was obvious the party was not going to abdicate, even the commissioner, Blount, used intimidation to prevent Lili'uokalani from reclaiming her power by force. In her memoir, the Queen discloses that Blount

⁹ Liliuokalani. "Appendix C. 'Facts as to the Submission of Hawaiian Questions to the Decision of the United States'," in *Hawaii's Story*. Japan: Charles E. Tuttle Company. 1964: 395.

¹⁰ Kehaulani Kauanui. "Precarious Positions: Native Hawaiians and US Federal recognition," 2013: 313.

¹¹ James H. Blount, *Foreign relations of the US, 1894: Affairs in Hawaii. Report of US Special Commissioner James H. Blount to US Secretary of State Walter Q. Gresham Concerning the Hawaiian Kingdom Investigation*, 53rd Cong. 3rd sess., 1894.

¹² Liliuokalani. *Hawaii's Story*. 1964: 250.

told her "...that if any disturbance should take place on our part it would prompt the United States to send vessels of war to the port, men would again be landed, and the result would be the loss of the independence of our country."¹³

Dole was elected President of the Republic of Hawai'i on July 4, 1894 from the steps of the Queen's palace.¹⁴ Days before the election, about 6,000 Hawaiians protested the Republic's formation and the crafting of another constitution that was "formed without the consent and participation of the people."¹⁵ The election succeeded however, because Thurston vastly diminished voting rights among Native Hawaiians.

To elect the President and Senators of this new government, eligible men were required to sign "an oath of loyalty to the provisional government, prosing to 'oppose any attempt to reestablish monarchical government in any form in the Hawaiian Islands'," which "only about 4,000 men, most of foreign birth," consented to.¹⁶ Influenced by voter restriction laws enforced on African-Americans in Jim Crow states at the time, any Hawaiians voting for Senators not only had to "speak, read and write the English language," but also were required to "be able to write correctly from dictation any portion of the constitution."¹⁷

Cleveland knew the only way he could fight these usurpers of Hawaiian sovereignty, would be to block their annexation attempts in Congress for the remainder of his presidency. Despite this, the Kanaka Maoli endured systematic cultural genocide as a result of the legislation passed by leaders of the Republic of Hawai'i. The effects of many of these laws are still felt today.

¹³ Liliuokalani, 255.

¹⁴ IBID, 258.

¹⁵ The initial one being the Bayonet Constitution; Noenoe Silva. *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism*. Durham and London: Duke University Press. 2004: 137.

¹⁶ Noenoe Silva. *Aloha Betrayed*. 2004: 136.

¹⁷ Vowell, 212.

During this entire period, from 1893 until Hawai'i's annexation, this illegitimate entity “seized roughly 1.8 million acres [of] Hawaiian Kingdom Crown and Government lands,” and claimed title to the land's yearly revenues.¹⁸ The majority of this land would later, unlawfully, become property of the State of Hawai'i in 1959. Additionally, in 1896, a law was implemented that “decreed that ‘the English language shall be the medium and basis of instruction in all public and private schools’.”¹⁹ In her book, *Aloha Betrayed*, Noenoe Silva, Professor of Political Science at the University of Hawai'i-Mānoa, discusses:

...after all the schools became English-medium schools, greater economic opportunity did not come to the students of the common schools because they were still expected to become nothing more than laborers. The common schools continued to be poorly funded and the curriculum was not changed to that of the select schools....The current public school system in Hawai'i still reflects this history. Kailua (O'ahu) High School, for example, with its large Hawaiian and lower socioeconomic student population, specializes in teaching the building trades, while Kaiser High School, with its wealthier and whiter population, specializes in college prep classes.²⁰

Despite the injustices experienced by the Kanaka Maoli, and the imprisonment of their beloved Queen in 1896, President Cleveland was the first to assert the right to Hawaiian self-governance in the midst of this US faction's unlawful conquest. He held steadfast to his support of “the right of the Hawaiian people to choose their own form of government.”²¹

Unfortunately the tides grew stronger against the Hawaiian people, as William McKinley took over the US presidency in 1897 and introduced an annexation treaty to Congress. The same three Hawaiian political organizations active during the initial overthrow of the Hawaiian Kingdom – Hui Hawai'i Aloha 'Āina, (with its male and female branches) and Hui Kālai'āina –

¹⁸ Kauanui, 314.

¹⁹ Silva, 144.

²⁰ Silva, 145; continued from Footnote 77, on page 229.

²¹ Liliuokalani, 254.

sent pleas, known as the *Kū'ē Petitions*, to Congress in opposition.²² The Queen sent her own appeal, too, in which she stated:

I declare such a treaty [Annexation Treaty of 1897] to be an act of wrong toward the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, in violation of international rights both toward my people and toward friendly nations with whom they have made treaties, the perpetuation of the fraud whereby the constitutional government was overthrown, and, finally, an act of gross injustice to me.²³

The Kū'ē Petitions and Lili'uokalani's appeal proved to have some affect, when moving forward to vote the Senate could not “secure the two-thirds majority vote required...for a treaty.”²⁴ This obstacle to annexation was circumvented when the Senator of Nevada, Francis Newland, an infamous imperialist, expansionist, and white supremacist, introduced a join resolution to Congress to force the annexation of Hawai'i after it fell under military occupation by the US during the Spanish-American War.²⁵ This resolution violated international law regarding annexation, which explicitly requires the ratification of a treaty. Nevertheless, in 1898, it was passed with “a simple majority in both houses.”²⁶ This marked the sinking of the last battle ship of Hawaiian sovereignty. Not only were the rights of Hawai'i's Queen and its people to sovereignty disregarded, but this right to self-governance and self-determination continued to be ignored over the next century.

In 1900, the Hawaiian Organic Act officially transformed the (unlawful) Republic of Hawai'i to the (illegitimate) Territory of Hawai'i. It placed the 1.8 million ceded acres of former

²² Translation: Petitions of protest or resistance

²³ Liliuokalani, 354.

²⁴ Kauanui, 314.

²⁵ April Merleaux. *Sugar and Civilization: American Empire and the Cultural Politics of Sweetness*. Chapel Hill: University of North Carolina Press. 2015: 32-36.

²⁶ Kauanui, 314.

Crown Lands “in the possession, use, and control of the government of the Territory of Hawai‘i...until otherwise provided for by Congress.”²⁷ For the next several decades under this regime, the culture and political power of the Kanaka Maoli were also oppressed.

Under President Dwight Eisenhower, “...the US government predetermined statehood for Hawai‘i by treating its political status as an internal domestic issue.”²⁸ On the plebiscite ballot, of the Admission Act of 1959, the only options given were “integration and remaining a US colonial territory.”²⁹ However, according to a United Nations’ resolution on the matter, Hawaiians at this time were entitled to choosing from other possibilities because of their right of self-determination such as “independence and free association.”³⁰

It is important to note that Native Hawaiians who did vote, as most did not, were greatly outnumbered by white and Asian immigrant voters.³¹ Furthermore, “132,773 [of the eligible 381,859 total voters] were in favor of statehood, while 7,971 [actively] opposed it,” and 249,086 people abstained from voting on Proposition 1 about statehood altogether.³² This amounts to only about 35% support of Hawai‘i’s integration into the United States.³³ Because the combination of votes who voted for either integration or remaining a US territory, outnumbered those who opposed either choice or simply abstained, the Hawai‘i Statehood Admission Act passed. As a result, “Congress delegated a trust responsibility to the State of Hawai‘i when it ceded 1.2 million

²⁷ Justin Pybas. “Native Hawaiians: The Issue of Federal Recognition.” *American Indian Law Review*. Vol 30. Issue 1. Jan. 1, 2005. p. 185-202; University of Oklahoma Press: 192.

²⁸ Kauanui, 314.

²⁹ IBID

³⁰ IBID

³¹ According to the PEW Research Center, the Native Hawaiian Population in 1959 was around 100,000; while the entire population of Hawaii at the time was more than 600,000, according to the US Census Bureau; Sara Kehaulani Good. "After 200 years, Native Hawaiians make a comeback" PewResearchCenter. April 6, 2015. Retrieve from <http://www.pewresearch.org/fact-tank/2015/04/06/native-hawaiian-population/>

³² "The Statehood Plebiscite." Statehood Hawaii. May 12, 2009. Retrieve from <http://statehoodhawaii.org/2009/05/12/the-statehood-plebiscite/>

³³ "The Statehood Plebiscite." Statehood Hawaii. May 12, 2009.

acres of [the total 1.8 ceded] land to the State,” for the purpose of “the betterment of the condition of Native Hawaiians.”³⁴

As early as 1959, a sense of apathy began to replace the once fervent protesting spirit, *pono*, of Kanaka Maoli toward US political relations.³⁵ In response to the Hawaiian statehood plebiscite, a University of Hawai‘i-Mānoa professor, Joseph Smith, wrote to the new State of Hawai‘i’s Governor, New Yorker William Quinn³⁶ that: “only three of the [Smith’s] students were actively in favor of statehood, and the remainder were either apathetic, saying, ‘it will make no difference,’ or definitely opposed.”³⁷ This perception is fundamental in understanding a facet of how many Hawaiians approach the issue of federal recognition today.

In 1960, the United Nations declared that the US “should have included independence and free association as choices” on the ballot.³⁸ In response, the UN General Assembly issued the Declaration of the Granting of Independence to Colonial Countries and Peoples, which “defined free association with an independent state, integration into an independent state, and independence as the three legitimate options of full self-government.”³⁹ However, the UN’s support of colonized nations to pursue decolonization and independence has greatly declined since this era. In 2007, it passed the Declaration on the Rights of Indigenous Peoples, which explicitly states in Article 46 that “Nothing in this Declaration may be...construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states.”⁴⁰

³⁴ Pybas, “Native Hawaiians.” 2005: 192; Admissions Act, Public Law No. 86-3, 73 Stat. 4 (1959).

³⁵ Translation: Righteousness

³⁶ William Quinn was granted governorship by President Dwight Eisenhower, serving from 1959-62. He was the last Republican governor until Linda Lingle, from Missouri, who served from 2002-10.

³⁷ “The Statehood Plebiscite.” Statehood Hawaii. 2009.

³⁸ Kauanui, 314.

³⁹ Kauanui, 315.

⁴⁰ “Declaration on the Rights of Indigenous Peoples.” United Nations. March 2008. Retrieve from http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

The United States' unlawful overthrow of the Kingdom of Hawai'i and its forced admission as a state, which were both fueled by the capitalist agendas of *ha'ole* businessmen,⁴¹ in addition to the backing off of respected international bodies like the UN in decolonization efforts, has presented the greatest challenge to upholding the Kanaka Maoli's rights to self-determination and self-governance, and most of all, their return to an independent, sovereign nation.

The Complex Legal Status of Native Hawaiians

Since the creation of the State of Hawai'i, more than 150 federal statutes have been passed that recognize the United States' "...special political and trust relationship with the Native Hawaiian community...[which] establish special Native Hawaiian programs in the areas of health care, education, loans, and employment, among others."⁴² However, these federal statutes, and even state laws, deeply confuse the judicial application of the political relationship between Native Hawaiians and the US. Although, popular opinion likens Native Hawaiians to the protected political class of federally recognized Native American and Alaskan Tribes, the actual status of Native Hawaiians is much more ambiguous, categorized as a suspect, racial class.⁴³ Conflicting definitions that characterize racial or ancestral requirements of Native Hawaiians, the Kanaka's inclusion in some laws with Native Americans but not others, and controversial acts of judicial decision-making, greatly endanger the benefits and preferential treatment granted to Kanaka Maoli.⁴⁴ Since the US has never granted Hawaiians proper federal recognition – because they have

⁴¹ Translation: foreigner, particularly of white race/European descent

⁴² "Frequently Asked Questions on Part 50 – The Final Rule for Procedures for Reestablishing a Formal Government-to-Government Relationship with the Native Hawaiian Community." Department of Interior. Sept. 2016. Retrieved from https://www.doi.gov/sites/doi.gov/files/uploads/external_faqs_on_part_50_final_rule_9.21.16_final.pdf

⁴³ Pybas, 186.

⁴⁴ According to Pybas, "There are 50 federal statutes which conclude that 'Native Americans' include Alaska Natives and Native Hawaiians. Alas, Native Hawaiians are not federally recognized," page 187.

not had unified political representation as a result of being denied their right to self-governance since 1893 – these threats persist.

In 1993, for the 100th anniversary of the overthrow of the Kingdom of Hawai‘i, President Bill Clinton issued the Apology Resolution. In it, the President and Congress recognized 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, either through their monarchy or through a plebiscite or referendum.⁴⁵

The document, in response to “the deprivation of the rights of Native Hawaiians to self-determination,” also calls for “reconciliation efforts between the United States and the Native Hawaiian people.”⁴⁶ Yet, it includes a disclaimer that “Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.”⁴⁷

In the declaration, Native Hawaiians are defined as “any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai‘i.”⁴⁸ This definition conflicts with the characterization in the Hawaiian Homes Commission Act of 1920, which defines Native Hawaiians as “descendants with at least one-half blood quantum of individuals inhabiting the Hawaiian Islands prior to 1778.”⁴⁹

The Hawaiian Homelands legislation created a “government sponsored homesteading program,” in which about 200,000 acres, of former Crown Lands ceded to the US federal government under the Hawaiian Organic Act, were set aside for Hawaiians “in the form of 99-year

⁴⁵ United States Public Law 103-150, 1993 Joint Resolution of Congress, “To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii,” 103rd Cong., 1st sess. Retrieved from <https://www.hawaii-nation.org/publawall.html>

⁴⁶ United States Public Law 103-150, 1993 Joint Resolution of Congress. 103rd Cong., 1st sess.

⁴⁷ United States Public Law 103-150, 1993 Joint Resolution of Congress.

⁴⁸ IBID.

⁴⁹ “HAWAIIAN HOMES COMMISSION ACT, 1920 (Act of July 9, 1921, c 42, 42 Stat 108).” Department of Hawaiian Home Lands. Retrieved from http://www.capitol.hawaii.gov/hrscurrent/vol01_ch0001-0042f/06-Hhca/HHCA_.htm

homestead leases at an annual rental of \$1.”⁵⁰ Prior to statehood, a federal agency, the Hawaiian Homes Commission enforced this activity. After 1959 however, the Hawai‘i State Department of Hawaiian Home Lands was established. Many argue that this was the first instance in which the federal government “acknowledged that one class of Hawaiians (those with 50 percent or more blood quantum) has entitlements that parallel those of American Indians.”⁵¹

The Bureau of Indian Affairs defines a federally recognized tribe as:

...an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs.⁵²

Under federal law, any statute concerning federally recognized Native American and Alaskan tribes must pass the rational basis standard of review. This means “legislation must pass the lowest standard which is being rationally or reasonably related to advancing a legitimate government interest.”⁵³ These groups have a “special” relationship with the US “based on political classification rather than suspect, racial classification,” which permits more lenient interpretation of laws concerning them.⁵⁴ However, Native Hawaiians are not entitled to the leniency of rational basis review. Both the definitions of Kanaka Maoli either directly refer to race or imply it through ancestry. To this degree, the US’s special relationship with Native Hawaiians is one that is race rather than politically based – despite the US’s claim that it is politically based, because there is not specifically political definition of Native Hawaiian.

⁵⁰ “Hawaiian Homes Commission Act.” Department of Hawaiian Home Lands. Retrieved from <http://dhhl.hawaii.gov/hhc/laws-and-rules/>

⁵¹ Kauanui 316

⁵² “Frequently Asked Questions.” Department of Interior – Indian Affairs. Retrieved from <https://www.bia.gov/FAQs/>

⁵³ Pybas, 186.

⁵⁴ IBID.

Like with Native Tribes, the US federal and state governments have created trust responsibilities that obligate the US to promote the interests and protect the resources of Hawaiians. This is seen in the Hawaiian Homes Commission Act and the Office of Hawaiian Affairs (OHA). Yet, this trust responsibility in itself does not extend all of the benefits and protections to Native Hawaiians that federal recognition as a whole potentially could, provided Congress passed laws extended them to Hawaiians. It also does not prevent constitutional challenges from being brought against Native Hawaiian programs on the grounds of racial discrimination.

In 1978, the Office of Hawaiian Affairs was created from an amendment made to the State's Constitution. The mission of the state agency, like the Department of Hawaiian Home Lands, is to promote the "bettering of the conditions of Native Hawaiians and Hawaiians."⁵⁵ OHA incorporates both definitions of Kanaka Maoli into its programs and services. It defines Hawaiians using the blood quantum characterization of the Hawaiian Homes Act, and Native Hawaiians based on the ancestral definition used in the Apology Resolution of 1993.⁵⁶ The OHA is also governed by a board of nine trustees, elected by Hawaiians for four-year terms,⁵⁷ who hold "title to real and personal property...in trust for Native Hawaiians."⁵⁸ The race-based voting requirement of OHA's Board of Trustees, in which only 'Hawaiians' were eligible, came under dispute in the US Supreme Court case *Rice v. Cayetano*, 528 U.S. 495 (2000).⁵⁹

Harold Rice, "a fourth-generation white resident of Hawai'i, was denied the right to vote" for OHA Board of Trustee members after registering with organization in 1996.⁶⁰ The OHA

⁵⁵ Pybas, 192.

⁵⁶ Chicago-Kent College of Law at Illinois Tech. "Rice v. Cayetano." Oyez. Retrieved from <https://www.oyez.org/cases/1999/98-818>

⁵⁷ "About." Office of Hawaiian Affairs. Retrieved from <http://www.oha.org/about/>

⁵⁸ Pybas, 192.

⁵⁹ "Rice v. Cayetano." Oyez.

⁶⁰ Kauanui 317.

explained that Rice did not meet the racial criteria for voting. Rice filed a lawsuit and argued that “both the trust managed by the office and the OHA voting provisions were racially discriminatory and violated the Fourteenth and Fifteenth Amendments.”⁶¹ The State of Hawai‘i argued in defense that the voting restriction “was based on a legal classification defining those people who are the beneficiaries of the trust” established in the Hawaiian Homes Act of 1920.⁶²

The Supreme Court sided in favor of Rice, that the OHA’s voting requirements did violate the Fifteenth Amendment on account that the characterization of “ancestry can be a proxy for race.”⁶³ However, the highest court did not rule on the Fourteenth Amendment allegation and the legality of the OHA trust, avoiding a broader ruling that could have completely shut off future claims of any apparent special relationship between Native Hawaiians and the US government. Nevertheless, this ruling allowed for many more attacks to be brought against numerous state and federal organizations and programs that offer special treatment to Hawaiians.

One of the greatest institutions threatened by Native Hawaiian’s precarious recognition under federal and state law, is the Kamehameha School system, established by the great-granddaughter of King Kamehameha the Great, Princess Bernice Pauahi Bishop. Princess Pauahi willed roughly 370,000 acres of her land “about nine percent of the total acreage of the Hawaiian kingdom — to found Kamehameha Schools.”⁶⁴ She did this in 1883 as a response to a vastly dwindling Hawaiian population whose culture and language had been outlawed by ha‘ole’s who gained more power in Hawai‘i’s government under Lili‘uokalani’s predecessor and brother, King David Kalākaua.

⁶¹ Kauanui, 317.

⁶² Kauanui, 318.

⁶³ Pybas, 200.

⁶⁴ “About Pauahi.” Kamehameha Schools. Retrieved from http://www.ksbe.edu/about_us/about_pauahi/

Pauahi's will stated that "preference [be given] to Hawaiians of pure or part aboriginal blood."⁶⁵ Kamehameha Schools has always publically acknowledged and respected this racial preference by granting "admission to any applicant with any amount of Native Hawaiian blood before admitting other applicants. Indeed, since 1966, only two non-Native Hawaiians have been admitted."⁶⁶ This was a source of constitutional challenge in the case *John Doe v. Kamehameha Schools*, heard by the US District Court of Hawaii in 2003, and affirmed in the Court of Appeals for the Ninth Circuit in 2006.⁶⁷

The District Court voted in favor of Kamehameha Schools, which was upheld by the Appellate Court in 2006, ruling that:

...Kamehameha has a legal right to offer admissions preference to Native Hawaiian applicants as a way to remedy past harms and current imbalances suffered by the Indigenous people of Hawai'i as a result of Western contact. The panel majority also found that Congress has recognized it has a special trust relationship with Native Hawaiians and in furtherance of that relationship, has enacted more than 85 statutes supporting programs designed to improve Hawaiian well-being.⁶⁸

Although the panel recognized Congress "has a special trust relationship with Native Hawaiians," which was used to affirm racial discrimination to promote Native Hawaiian education, *Rice v. Cayetano* remains the reigning precedent. *Rice* continues to make it easier for constitutional challenges to be filed against the State of Hawai'i or Hawaiian organizations through its determined application of the strict scrutiny standard of review rather than rational basis review.⁶⁹

⁶⁵ "Admission and Program Enrollment." Kamehameha Schools. Retrieved from <https://apps.ksbe.edu/admissions/frequently-asked-questions/>

⁶⁶ "John Doe v. Kamehameha Schools." US Court of Appeals for the Ninth Circuit. No. 09-15448. Filed March 2, 2010. Retrieved from <http://cdn.ca9.uscourts.gov/datastore/opinions/2010/03/02/09-15448.pdf>

⁶⁷ "John Doe v. Kamehameha Schools." US Court of Appeals for the Ninth Circuit. 2010.

⁶⁸ "Admission and Program Enrollment." Kamehameha Schools. Retrieved from <https://apps.ksbe.edu/admissions/frequently-asked-questions/>

⁶⁹ Pybas, 201.

Since *Rice*, federal recognition became an appealing step for Hawaiians to take “because federally recognized tribal nations are immune from Fourteenth Amendment legal challenges.”⁷⁰ Many believe the US federal recognition of Native Hawaiians would serve as the best “remedy against [this] battery of lawsuits that [have] sought to threaten US federal funding and programs for Native Hawaiians” over the past three decades.⁷¹ The greatest supporter of this is Former Senator of Hawai‘i, Daniel Akaka.

Attempts at Federal Recognition of Native Hawaiians

In 2000, “the Departments of the Interior and Justice jointly issued a recommendation for self-determination for Native Hawaiians.”⁷² At this time, Sen. Daniel Akaka formed and chaired a congressional committee, the Task Force on Native Hawaiian Issues. Over the next 10 years, Akaka’s main objective was to pass federal legislation that clearly established Native Hawaiians as an “indigenous, native people of the United States [who have a] ‘special relationship’ with the United States” and thus a right to self-determination under federal law.⁷³ Such recognition would give Native Hawaiian institutions and programs the same immunity to racial discrimination challenges as possessed by other federally recognized tribes, thus avoiding further setbacks posed by judicial rulings like *Rice*.

The Native Hawaiian Government Reorganization Act of 2009, also known as the Akaka Bill, “creates a separate, race-based government specifically for Native Hawaiians.”⁷⁴ Senator

⁷⁰ Kauanui, 318.

⁷¹ Kauanui, 312.

⁷² Frances Kai-Hwa Wang. “Dept. of Interior Finalizes Rule to Recognize Native Hawaiian Government.” Sept. 23, 2006. NBC News. Retrieved from <http://www.nbcnews.com/news/asian-america/departments-interior-finalizes-rule-recognize-native-hawaiian-government-n653631>

⁷³ Pybas, 201.

⁷⁴ “Native Hawaiian Recognition (Akaka Bill)” House Committee on Natural Resources. Retrieved from <http://naturalresources.house.gov/issues/issue/?IssueID=8447>

Akaka in his bill stipulates “The entity would be formed by a commission of nine members appointed by the secretary of the interior.”⁷⁵ This bill also gives vast bargaining power to the State of Hawai‘i in its own negotiations with this Native Hawaiian government and the indigenous entity’s negotiations with the US federal government. Specifically:

The bill allows the State of Hawai‘i to sit at the table to negotiate regarding matters including the transfer of lands, natural resources, and other assets and the protection of existing rights related to such lands or resources; the exercise of governmental authority over any transferred lands, natural resources, and other assets, including land use; the exercise of civil and criminal jurisdiction; the delegation of criminal powers and authorities to the Native Hawaiian governing entity by the United States and the State of Hawai‘i; and any residual responsibilities of the United States or by the State of Hawai‘i...All negotiations must take place within the framework of US federal law and policy with regard to Indian tribes and under US plenary power.⁷⁶

It is not hard surmise why the majority of Hawaiians oppose the Akaka Bill, seeing it as a disguised “Hawaiian land grab.”⁷⁷ The Hawaiian governing entity itself would not even be elected by the Kanaka Maoli, so there is no certainty that it would serve their interests any more than the State of Hawai‘i already alleges to, or if it did, that it would be able to have more power than the state. Furthermore, this very process, in which Sen. Akaka predetermined the form of government for Hawaiians and its representatives, and conditions it as “domestic dependent entity under the full and exclusive plenary power of Congress,”⁷⁸ undermines the very essence of Hawaiian self-determination and self-governance. In this bill, their ability to choose their governmental form is taken away and their bargaining power is undermined by federal authority.

⁷⁵ Kauanui, 319.

⁷⁶ Kauanui, 320.

⁷⁷ Valerie Richardson. "Only 34 Percent of Hawaiians Support Akaka Bill." Human Events. Dec 18, 2009. Retrieved from <http://humanevents.com/2009/12/18/only-34-percent-of-hawaiians-support-akaka-bill/>

⁷⁸ Kauanui, 322.

Despite arguing how it would allow Native Hawaiians to exercise greater leverage with the federal government over certain programs, as well as prioritize Native opinions on issues such as land management, this failed to be believed by Kanaka Maoli. Ultimately, Sen. Akaka's bill was unsuccessful at the federal level.⁷⁹ In 2011 however, (former) Hawai'i Governor Neil Abercrombie signed the Senate's version of the Akaka Bill (S 1520) into state law, granting Native Hawaiians formal recognition to self-governance at that level.⁸⁰ The hope was that with a formal Hawaiian governing entity existing and operating at the state level, future attempts at federal recognition would come more easily.

This legislation differs from the federal bill by creating the Native Hawaiian Roll Call Commission as the state mechanism by which a formal Hawaiian governing entity would be chosen, its representatives elected, and its constituents/citizens recorded. The Commission is led by the former Hawai'i Governor John Waihee,⁸¹ and is funded by the Office of Hawaiian Affairs.⁸² Na'i Aupuni, a small, private non-profit, was created in 2014 to lead the formation of the Native government under the constraints of the Roll Commission, and was also funded by OHA.⁸³

By the summer of 2015, roughly 95,000 Native Hawaiians were enrolled on the Commission's list, titled Kana'iolovalu.⁸⁴ Kana'iolovalu defines Native Hawaiians "as any person who is a lineal descendant of the aboriginal people who resided in the Hawaiian Islands

⁷⁹ This also had much to do with the fact that Republicans thought it was not restrictive enough on the Native Hawaiian governing entity.

⁸⁰ Wendy Osher. "Governor Signs Native Hawaiian Recognition Bill into Law." Maui Now. July 6, 2011. Retrieved from <http://mauinow.com/2011/07/07/governor-signs-native-hawaiian-recognition-bill-into-law/>

⁸¹ Brittany Lyte. "Historic Election could return sovereignty to Native Hawaiians." Oct. 30, 2015 American AlJazeera. Retrieved from <http://america.aljazeera.com/articles/2015/10/30/historic-election-could-return-sovereignty-to-native-hawaiians.html>

⁸² Wendy Osher. "Governor Signs Native Hawaiian Recognition Bill into Law." Maui Now. 2011.

⁸³ "About Na'i Aupuni." Na'i Aupuni. Retrieved from <http://www.naiaupuni.org/about.html>

⁸⁴ Imani Altemus-Williams. "Towards Hawaiian Independence Native Americans warn Native Hawaiians of the Dangers of Federal Recognition." Intercontinental Cry. Dec. 7, 2015. Retrieved from <https://intercontinentalcry.org/towards-hawaiian-independence>

prior to 1778, or, any person who is eligible or is a lineal descendant of a person who is eligible for Hawaiian Home Lands.”⁸⁵ These “qualified and interested Native Hawaiians” were invited by Na’i Aupuni to vote on 40, pre-selected delegates who would represent Native interests at a constitutional convention, set for December 1, 2015.⁸⁶ However, the vote was delayed by the courts when a small group of Hawaiians and ha’ole men, part of the conservative NGO Grassroot Institute of Hawai’i, challenged the whole process of a race-based Hawaiian government as a violation of the Fifteenth Amendment.⁸⁷

With a 5 vote majority, the US Supreme Court issued an injunction to put a hold on Na’i Aupuni’s ballot counting. However, to avoid further litigation, Na’i Aupuni terminated the election and extended a seat to all 196 of the candidates at the constitutional convention.⁸⁸ The plaintiffs filed a new motion for “civil contempt,” that Na’i Aupuni violated the injunction, in the suit *Keli’i Akina, et al. v. The State of Hawaii, et al. (2016)*; however, the Supreme Court denied the motion on account of it becoming “moot,” or irrelevant.⁸⁹ In the midst of this, the convention, to determine “the best approach to self-governance” of Native Hawaiians, took place on February 1, 2016.⁹⁰

At this meeting, a crucial difference in the type of Native Hawaiian governing body was proposed. As opposed to the nine member board elected by the Secretary of the Interior stipulated in the federal Akaka Bill,⁹¹ Na’i Aupuni and the Roll Commission delegates determined that “The

⁸⁵ “Registration Procedures.” Native Hawaiian Roll Commission – Kanaiolowalu. April 12, 2012. Retrieved from <http://kanaiolowalu.org/about/procedures/>

⁸⁶ Wendy Osher. "Governor Signs Native Hawaiian Recognition Bill into Law." Maui Now. July 6, 2011.

⁸⁷ Imani Altemus-Williams. "Towards Hawaiian Independence Native Americans warn Native Hawaiians of the Dangers of Federal Recognition." Intercontinental Cry. Dec. 7, 2015.

⁸⁸ The federal lawsuit, *Keli’i Akina, et al. v. The State of Hawaii, et al. (2016)* has been dismissed; “*Akina v. State of Hawaii*.” US Court of Appeals for the Ninth Circuit. No. 15-17134. Filed Aug. 29, 2016. Retrieved from <https://cdn.ca9.uscourts.gov/datastore/opinions/2016/08/29/15-17134.pdf>

⁸⁹ “*Akina v. State of Hawaii*.” US Court of Appeals for the Ninth Circuit. No. 15-17134. Filed Aug. 29, 2016.

⁹⁰ Altemus-Williams. "Towards Hawaiian Independence Native Americans warn Native Hawaiians of the Dangers of Federal Recognition." 2015.

⁹¹ *Kauanui*, 319.

government would be led by a president and vice president and advised by an island council, plus a legislature with 43 members representing the islands and Native Hawaiians, as well as a judicial authority.”⁹² However, since this meeting, none of these prospects have been solidified; ratification efforts, and the formation of a Native Hawaiian political institution in its entirety, has been halted with the dissolution of Na‘i Aupuni in April 2016.⁹³ The Native Hawaiian Roll Commission still exists however and is one of the most controversial mechanisms that could jeopardize Native Hawaiian representation if it is relied on to form a Hawaiian governing body as a precondition of US federal recognition.

The US Census Bureau estimated that about 527,077 Native Hawaiians resided in the United States as of 2010.⁹⁴ The Kana‘iolowalu list today boasts 122,785 registered members at least 18 years old, about 20% of the population.⁹⁵ However, the names on the Commission’s list, allegedly “contain duplicate names and names of deceased individuals, as well as signatures that were transferred from previous state-controlled lists of Native Hawaiians onto the roll without the consent of those individuals.”⁹⁶ The Roll Commission is seen as an existential threat to many Natives who believe it is simply a way to impose statistical genocide on the Kanaka Maoli. The rationale is that:

...the remaining 80 percent who have not enrolled will have relinquished, many unknowingly, their rights and the rights of their children and descendants as legally recognized Native Hawaiians. They [will be] exempt from voting, and excluded from receiving monetary benefits and land rights.⁹⁷

⁹² Jennifer Sinco Kelleher. "Native Hawaiian Group Adopts Constitution at Convention." US News. Feb. 27, 2016. Retrieved from <https://www.usnews.com/news/us/articles/2016-02-27/native-hawaiian-group-adopts-constitution-at-convention>

⁹³ This greatly has to do with the prospect of civil lawsuits and constitutional challenges being filed; “Akina v. State of Hawaii.” 2016.

⁹⁴ “2010 Census Shows More than Half of Native Hawaiians and Other Pacific Islanders Report Multiple Races.” US Census Bureau. May 8, 2012. Retrieved from <https://www.census.gov/2010census/news/releases/operations/cb12-83.html>

⁹⁵ “Home.” Native Hawaiian Roll Commission – Kana‘iolowalu. Retrieved from <http://kanaiolowalu.org/>

⁹⁶ Altemus-Williams. “Native Americans Warn Native Hawaiians of the Dangers of Federal Recognition.” 2015.

⁹⁷ Altemus-Williams, 2015.

Two weaknesses of the State of Hawai‘i facilitated self-governance is that just in the federal scenario, it has been unilaterally initiated by the US, rather than the Kanaka Maoli themselves. Many are still concerned that this Hawaiian governing entity will be too bent to the will of the State of Hawai‘i and will not preserve the demands of Hawaiians in land disputes, cultural heritage issues, education or other social programs. Additionally, without the immunity from race-based constitutional challenges granted through federal recognition, the Native Hawaiian Roll Commission and its election of a Native Hawaiian government by Hawaiians only will remain constitutionally unsound. This could potentially be devastating to any later attempts made by Hawaiians for self-determination and self-governance.⁹⁸ Nevertheless, many continue to view Hawaiian rights to self-governance as fundamental to improving their status in contemporary times; and thus, have returned to the issue of obtaining federal recognition because of the legal immunity it will provide over the formation of a Native Hawaiian race-based government.⁹⁹

Robin Danner, “a commissioner on the Native Hawaiian Roll Commission [appointed by Gov. Abercrombie], worked with Sen. Akaka for 15 years on the Akaka Bill.”¹⁰⁰ He believes that any attempt to restore Hawaiian’s rights to self-governance should be pursued. Reflecting on the initiative that took place from 2011 to 2015 on the state level, Danner stated:

For the first time in over a hundred years, there will be a definitive voice on Native Hawaiian issues. A definitive and recognized government to speak for our culture, our people, our issues, instead of a county of state government attempting to have a subcommittee within their agencies or structures to mouthpiece the value of native viewpoints, which has not worked well at all.¹⁰¹

⁹⁸ Lyte, 2015.

⁹⁹ Political rather than racial classification of Native Hawaiians

¹⁰⁰ Dan Nakaso. “US Says sovereignty decision is Hawaiians” Sept. 23, 2016. Star Advertiser. Retrieved from <http://www.staradvertiser.com/2016/09/23/hawaii-news/u-s-says-sovereignty-decision-is-hawaiians/>

¹⁰¹ Lyte, 2015.

Annelle Amaral, former member of the House of Representatives, former Deputy Director of OHA, and current president of the Association of Hawaiian Civic Clubs, optimistically stated: “What it [federal recognition] allows us to do is to finally have control over our sacred sites, over health care for our people, over the education of our children? Instead of waiting for someone else to do something about our problems, with our own government we can begin to initiate change.”¹⁰²

Sen. Akaka’s activity, supported by those like Danner and Amaral, proved to be of some avail when on September 23, 2016, the Department of the Interior issued “The Final Rule for Procedures for Reestablishing a Formal Government-to-Government Relationship with the Native Hawaiian Community,” also called Part 50. According to the rule:

...[It] establishes a procedure and criteria that the Secretary of the Interior would apply if the Native Hawaiian community forms a unified government that then seeks a formal government-to-government relationship with the United States. The process is optional and triggered only when a Native Hawaiian government submits a written request to the Secretary. The written request requires, among other elements, a showing that the community’s governing document has broad-based community support [of at least 50,000 eligible Kanaka Maoli voters] in order to ensure that the will of the community as a whole is respected. The decision to reorganize a Native Hawaiian government and the further decision to re-establish a formal government-to-government relationship with the United States are for the Native Hawaiian community to determine as an exercise of its self-determination. Therefore, the rule does not attempt to reorganize a Native Hawaiian government or dictate the form or structure of that government.¹⁰³

As Hawaiians are the only indigenous entity without a cohesive political structure that can negotiate with the US government, Part 50 is much stronger than the recommendation the DOI passed in 2000. Rather than simply acknowledge that Native Hawaiians have the right to self-governance, this represents a unilateral promise that the DOI will have to support any governing

¹⁰² Merrit Kennedy. “Native Hawaiians now have a pathway to form a government.” Sept. 23, 2016. NPR. Retrieved from <http://www.npr.org/sections/thetwo-way/2016/09/23/495212183/native-hawaiians-now-have-a-pathway-to-form-a-government>

¹⁰³ “Frequently Asked Questions on Part 50 – The Final Ruling for Procedures Reestablishing a Formal Government-to-Government Relationship with the Native Hawaiian Community.” DOI. 2016.

body that is formed by Native Hawaiians in the future. The DOI's reasoning for this is that it "would allow the United States to more effectively implement the special political and trust relationship that Congress has long recognized with the Native Hawaiian community."¹⁰⁴

If Hawaiians were to move forward with government building and federal recognition, Part 50 stipulates that: (1) a system of Hawaiian courts and other institutions could be created to interpret and enforce the governing entity's laws; (2) Federal agencies would be obligated to regularly communicate and consult the Native Hawaiian entity; (3) a pathway would be provided for the Native government to "protect its members' interests by filing suit in Federal court"; and (3) The Native Hawaiian governing entity "...would have the capacity to sue and be sued (subject to sovereign immunity and other jurisdictional limitations), and the ability to file suit to seek redress for past wrongs." However, the likelihood that the Kanaka Maoli would win in any of these cases is just not very likely, when citing federal handling of Native American tribes and the history of US disregard for Native Hawaiians.

Part 50 also treats Native Hawaiian federal recognition as unique to and separate from that of Native American and Alaska Native tribes. The DOI determined that: (1) "The Native Hawaiian Governing Entity will not appear on the annual list of federally recognized tribes required under the List Act"; (2) "Native Hawaiians are therefore not eligible for Federal Indian programs, services, or benefits unless Congress expressly and specifically declares them eligible"; and (3) the DOI does not have the "ability to take land into trust for the Native Hawaiian Governing Entity...[because] The Indian Reorganization Act, which authorizes the Department to take land into trust for federally recognized Indian tribes, does not apply to Hawaii."¹⁰⁵ This is very important because land rights is one of the most important issues among Native Hawaiians, who

¹⁰⁴ "Frequently Asked Questions on Part 50." DOI. 2016.

¹⁰⁵ IBID

every year witness more non-Hawaiian residents amplifying gentrification across the islands, dozens of new development projects littering the islands with hotels and in millions of tons of cement, and boatloads of businessmen buying up hundred, sometimes thousands of acres of Native land – the most egregious case being the purchase of an entire island, Lana’i, in 2012, by Larry Ellison, the CEO of a technology corporation Oracle, and fifth wealthiest man in America.¹⁰⁶ Due to this condition, the Native Hawaiian government would be left to fight the State of Hawai’i, over land rights to parts or the whole 1.8 million acres of ceded Hawaiian Crown and Government Land. The US Supreme Court case, *Hawaii, et al., Petitioners v. Office of Hawaiian Affairs, et al. Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009), implied that it will be very easy for the State to retain full control over its land rights, even if the moral and legally right thing to do would be to relinquish some claim to a Native Hawaiian government.¹⁰⁷

In *Hawai’i v. Office of Hawaiian Affairs et al. (2009)*, the Office of Hawaiian affairs attempted to restrict the State of Hawai’i ability to use any of the ceded Crown and Government Lands for private development purposes. The court ruled that no such restriction was valid and the State could exercise authority over these million acres of ceded land even if this amounted to the misuse of land entrusted to OHA for Native Hawaiians.¹⁰⁸ This decision was crucial because it decreased the possibility that Hawaiians, after forming a unified government, can “demand a mutual-consent decree to ensure bilateral agreements...to preserve their title to the so-called ceded lands – 1.8 million acres of former Crown and Government lands of the Hawaiian Kingdom.”¹⁰⁹

¹⁰⁶ Nate Gaddis. “Analysis: Who Owns Hawaii?” Jan. 31, 2014. Big Island Now. Retrieved from <http://bigislandnow.com/2014/01/31/analysis-who-owns-hawaii/>; “Top 50 billionaires 2014, photo 5 of 50” Forbes. Retrieved from <https://www.forbes.com/pictures/mel45hdjl/5-larry-ellison/#799ddcf2580d>

¹⁰⁷ It’s legally right because the process through which the State came to acquire the land in the first place was illegal under international law (ie the unlawful confiscation of the land after Hawai’i’s illegal overthrow and the island’s forced process of Statehood)

¹⁰⁸ Chicago-Kent College of Law at Illinois Tech. “Hawaii v. Office of Hawaiian Affairs.” Oyez. Retrieved from <https://www.oyez.org/cases/2008/07-1372>

¹⁰⁹ Kauanui, 323.

In this case, SCOTUS indirectly strengthened the State of Hawai'i's powers over a future Native Hawaiian governing entity, which would most certainly want pursue reclamation over the ceded lands.

In response to the DOI's announcement of Part 50, the U.S. Secretary of the Interior, Sally Jewell, stated that:

Throughout this two-year rule-making process, thousands of voices from the Native Hawaiian community and the public testified passionately about the proposal. Today is a major step forward in the reconciliation process between Native Hawaiians and the United States that began over 20 years ago. We are proud to announce this final rule that respects and supports self-governance for Native Hawaiians, one of our nation's largest indigenous communities.¹¹⁰

This is one of the gravest misrepresentations put forward by the DOI concerning Hawaiian opinion of federal recognition.

In the Summer of 2014, the DOI held 15 public hearings throughout the islands to take into consideration Hawai'i federal and state government officials', as well as public, opinions before issuing its final ruling.¹¹¹ However, of the hundreds who testified "Ninety five percent of Hawaiians who spoke out were opposed to any notion of federal recognition or state and federal interference in [their] right to self-determination."¹¹² The meetings were supposed to center around the type of government that Hawaiians would most like to form, yet "most of the speakers refused to address the question and instead blasted the 1893 overthrow of the Hawaiian kingdom and urged the United States to leave the islands."¹¹³ At the State Capitol Building on O'ahu, a pair of Natives even sang a Hawaiian *mele* as another held up a copy of "Queen Lili'uokalani's Protest of the

¹¹⁰ Office of the Secretary. "Interior Department Finalizes Pathway to Reestablish a Formal Government-to-Government Relationship with the Native Hawaiian Community." DOI. 2016.

¹¹¹ Altemus-Williams, 2015.

¹¹² Frances Kai-Hwa Wang "Some Protest US Rule for Recognition of Native Hawaiian Government" Sept. 26, 2016. NBC News. Retrieved from <http://www.nbcnews.com/news/asian-america/some-protest-us-rule-recognition-native-hawaiian-government-n654501>

¹¹³ Dan Nakaso. "US Says sovereignty decision is Hawaiians'" 2016. Star Advertiser.

overthrow of Hawaii.”¹¹⁴ At a meeting held in Hilo on the Big Island of Hawai‘i, one Kanaka Maoli asserted “It’s a trap.”¹¹⁵

Part 50 includes the requirement of the compilation of a list of eligible Native Hawaiian voters, like, but not specifically, the controversial Native Hawaiian Roll Call Commission. To this degree, some believe federal recognition will unlawfully redefine “who is legally considered Native Hawaiian, thereby delimiting the number of those with a legal voice and able to register dissent,” as well as contribute to the systematic downsizing of a legally recognized Hawaiian population.¹¹⁶ Despite these potential complications of the federal recognition of Native Hawaiians, former Gov. Waihee stated:

It’s complicated. If you’re looking at a native people and their struggle, any weapon that you can put in your arsenal is positive, and that’s the way I see this situation. Federal recognition is another weapon in the arsenal [chiefly against constitutional challenges to Hawaiian benefits and programs].¹¹⁷

The process through which the US has approached federal recognition of Native Hawaiians from 2000 to 2009, and again in 2016, has been unilaterally facilitated, rather than propositioned by Kanaka Maoli themselves “via a bilateral process guided by the United Nations.”¹¹⁸ As Kehaulani Kauanui argues in her essay “Precarious Positions: Native Hawaiians and US Federal recognition,” it is becoming ever more clear that “those most in support of federal recognition do not represent the Hawaiian people.”¹¹⁹ This is because organizations like the Office of Hawaiian Affairs and Department of Hawaiian Home Lands, depend on federal and state funding for their very existence, as well as their claim to the land and money entrusted to them by the US

¹¹⁴ Frances Kai-Hwa Wang. “Dept. of Interior Finalizes Rule to Recognize Native Hawaiian Government.” 2016.

¹¹⁵ Kai-Hwa Wang, 2016.

¹¹⁶ Altemus-Williams, 2015.

¹¹⁷ Nick Grube “Hawaiian Federal Recognition: The Lessons from Standing Rock.” Dec. 19, 2016. Civil Beat. Retrieved from <http://www.civilbeat.org/2016/12/hawaiian-federal-recognition-the-lessons-from-standing-rock/>

¹¹⁸ Kauanui, 323.

¹¹⁹ Kauanui, 325.

government.¹²⁰ Thus, it is not in their interest to object to such a process even if the Hawaiian people, who their institutions were created to allegedly benefit and protect, do oppose it. Kauanui states that:

Hawaiians oppose federal recognition because they see it as facilitating further systematic injustices done to the Hawaiian people by the US federal and state governments. Essentially from every avenue, federal recognition seeks to impose ‘limits on independent national sovereignty’ rather than truly promoting Hawaiian self-determination and self-governance.¹²¹

Next to forming an autonomous Native Hawaiian government that is not confined by the limitations of federal recognition, total Hawaiian independence, succession from the US, is the most supported topic on many Native Hawaiian political agendas. Most Hawaiians believe that any possibility to pursue decolonization and complete sovereignty will be completely eradicated by federal recognition. Thus they denounce any claims that “federal recognition is the first step to international recognition”¹²² and thus independence.

University of Hawai‘i-Mānoa Professor David Keanu Sai, maintains that since the 1840s, Hawai‘i has remained a sovereign nation under international law. This is because, he argues, “...there was never a treaty of annexation between Hawaii and the US [only an illegal joint resolution]. [Thus] If the United States cannot demonstrate proof of an existing treaty [which it obviously cannot], Hawaii remains a sovereign state [under international law].”¹²³ Professor Sai has testified these claims over the past two decades in various international courts.¹²⁴ He is supported by those like Iokepa Casumbal-Salazar, University of California, Los Angeles’ President’s Postdoctoral Fellow, who agree that “Hawaii’s status as an independent state has never

¹²⁰ Kauanui, 325.

¹²¹ IBID.

¹²² Grube “Hawaiian Federal Recognition.” 2016

¹²³ Altemus-Williams, 2015.

¹²⁴ IBID.

been legally extinguished [the entire issue has rather been ignored] and thus continues to exist, as affirmed in the Permanent Court of Arbitration and many lawyers and scholars of international law.”¹²⁵ By these interpretations, when the DOI presented federal recognition as an option to Kanaka Maoli, propositions for Hawaiian independence should have been communicated, too.

Hawaiian Distrust of the US Government and Federal Recognition

There is an overwhelming perception among Kanaka Maoli that the US government has been failing this people and their islands for over a century. This is also why so many are apathetic to participate in a state or federally sponsored nation building process, and have been since the 1950s, because they simply do not trust that their conditions will improve unless they are governing themselves and their islands with completely autonomy. This perception is not unwarranted.

In 1991, the Hawaii Advisory Committee to the US Commission on Civil Rights published a review of the Hawaiian Homelands Program, called “A Broken Trust: The Hawaiian Homelands Program: Seventy Years of Failure of the Federal and State Governments to Protect the Civil Rights of Native Hawaiians.” In it, they concluded that from the creation of the Hawaiian Home Land Commission Act in 1920, which ceded 200,000 acres of former Hawaiian Crown Land to the US government, to the assessment’s end in 1990, that:

The homesteading program has provided very few tangible benefits for beneficiaries of the trust. Only 17.5 percent of the total available lands are being homesteaded. At the same time, over 62 percent of the lands are being used by non-natives, often for minimal compensation. Especially egregious is the continued questionable use of valuable homelands by the United States Government, with virtually no compensation to the trust. These include some of the most suitable lands for development of homes. With a waiting list of over 20,000 applicants, it is unconscionable that the United States should continue to so blatantly and arrogantly

¹²⁵ Altemus-Williams, 2015.

defy the interests of the Native Hawaiian community, whose rights it should be aggressively defending.¹²⁶

Robert Po'okapu Keli'ihō'omalū was born in 1940 in Kaimū, Kalapana on the Big Island. He was one of the last Native Hawaiians of full descent. Po'okapu died on February 15, 2015, a beloved Hawaiian leader and representative for the Lawful Hawaiian Government of the Big Island district of Puna, as well as grandfather of over 40 'āina loving kanaka.¹²⁷ Po'okapu was one of the Natives every year who pass away while awaiting land rightfully owed to them by the Department of Hawaiian Home Lands.¹²⁸ Due to the homelands' requirement of "one-half blood quantum," the list of eligible Hawaiians dwindle every year, as such eligible Natives like Po'okapu die or their children have *keiki*¹²⁹ with non-Hawaiians effectively 'diluting the blood line.'

Po'okapu and his family before him did own land along the coastline where he grew up in Kaimū. However, this land was confiscated by the State of Hawai'i in the 90s when it became encroached upon by lava from Kīlauea, a volcano that has been active since the 1980s and serves as the greatest attraction of the Hawai'i Volcanoes National Park. There was no equitable form of compensation, or land grant that was gifted to the Keli'ihō'omalū's in return for the State's theft. Po'okapu's landlessness did not give him any more priority on the Hawaiian Homes waitlist either. The only remedy the State extended to this family, which remains in effect today, was that they were given access to the Park's coastline for free, however, only if the family members requesting access have a purpose such as fishing, picking 'opihi,¹³⁰ or other traditional activity.¹³¹

¹²⁶ "A broken trust: the Hawaiian homelands program: seventy years of failure of the federal and state governments to protect the civil rights of native Hawaiians / Hawaii Advisory Committee to the United States Commission on Civil Rights." United States Commission on Civil Rights. Hawaii Advisory Committee. Washington, D.C. 1991: page II. Retrieved from <https://www.law.umaryland.edu/marshall/usccr/documents/cr12h313z.pdf>

¹²⁷ Translation: Island

¹²⁸ Samuel Kanealoha Kelihoomalū. Personal Interview: conducted via telephone by Brieanah Gouveia. March 1, 2017.

¹²⁹ Translation: Children

¹³⁰ Translation: Cellena, a black shellfish similar to a mussel or clam, which suctions itself onto ocean rocks

¹³¹ Kelihoomalū. Personal Interview. 2017.

One of the main recommendations that the Hawai'i Advisory Committee proposed in its review of the Hawaiian Homelands Program, was that the "creation and recognition of a sovereign entity which will control Hawaiian homes trust lands as well as certain ceded and Federal lands which should be returned to the Hawaiian people," is paramount to remedy the history of injustices felt by Kanaka Maoli as a result of US federal and state exploitation of Hawaiian land.¹³² Yet, as has been made explicit in this paper, the US has shown no interest in entrusting land specifically to a Hawaiian governing entity, and in fact, it is implied that the State of Hawai'i could rightfully oppose ceding its land rights to any other entity than itself. Kauanui effectively communicates the hypocrisy that "Federal protection [is] now being sold to Native Hawaiians as a defense against average citizens who challenge the Hawaiian trusts that the United States never upheld in the first place [like the Hawaiian Homes Commission Act and Office of Hawaiian Affairs trusts] – trusts that are based on the theft a nation."¹³³

It is the US's failure to ever adequately provide reparations to the Kanaka Maoli for the unlawful dissolution of their once highly functional, and self-sustaining Hawaiian Kingdom, as well as the US's inability to effectively fulfill its trust responsibilities to Hawaiians, that has caused the majority of Hawaiians to prefer pursuing complete independence from the US. Hawaiians do not believe how achieving a status similar to federally recognized Native American and Alaskan tribes would improve their rights and wellbeing, when the US has not been able to and still cannot adequately provide for the Hawaiian people and Natives tribes, as citizens of its nation.

Eric Seitz, lecturer at the University of Hawai'i at Mānoa's William S. Richardson School of Law and Honolulu attorney, believes that there is not "...any real positive history of tribes being able to negotiate with the United States government that suggest tribes today ought to go down

¹³² "A broken trust:" United States Commission on Civil Rights. Hawaii Advisory Committee. 1991: 41.

¹³³ Kauanui, 319.

that road.”¹³⁴ Shannon Rivers, an Akimel O’otham delegate for the United Nations Permanent Forum on Indigenous issues, has even stated:

Some people might argue that under the federal system, this US government system works better for us [federally recognized tribes]. But what we’ve seen over the last several decades is that extreme poverty still exists in many of our communities; alcoholism, drug addiction, violence to our women and children, high levels of imprisonment of our native people. So the question is does this system really work and has it worked? My answer would be no.¹³⁵

Hawaiians had a thriving, self-sufficient and sustainable society for generations before the overthrow of their kingdom. Thus, it is arguable that Hawaiians’ wellbeings, like Native Americans whether federally recognized or not, have never been restored to their pre-colonial quality of life (as it relates to autonomy over tradition, religion, and things such as natural resources and land), despite federal and state agencies and programs existing that explicitly argue they are devoted to the betterment of this indigenous group.

More specifically, Hawaiians “have the most dismal life statistics of any ethnic group in Hawai’i nei;¹³⁶ that is, the shortest projected lifespan... greatest per capita amount of heart disease; [and] highest rates of imprisonment and substance abuse.”¹³⁷ Across the islands, “the prevalence of overweight and obesity exceeds 90 percent and diabetes approaches 50 percent in some areas.”¹³⁸ The islands also import approximately 92 percent of their food, despite Hawai’i’s abundance of natural resources and wealth of sustainable agricultural traditions within the Hawaiian culture.¹³⁹ According to the US Census Bureau, “as of 1999, more than one of every six

¹³⁴ Grube. “Hawaiian Federal Recognition.” 2016.

¹³⁵ Altemus-Williams, 2015.

¹³⁶ Translation: Blessed Hawaii

¹³⁷ Silva, footnote 66; page 229

¹³⁸ Howard Koh. “The Burden of Diabetes on the Native Hawaiian and Pacific Islander Community.” Nov. 20, 2013. Retrieved from <https://obamawhitehouse.archives.gov/blog/2013/11/20/burden-diabetes-native-hawaiian-and-pacific-islander-community>

¹³⁹ Altemus-Williams, 2015.

Native Hawaiians [close to 17.0 percent] had incomes below the poverty line, compared with 10.7 percent of the total state population.”¹⁴⁰ By 2013, this percent decreased to about 14 percent for Hawaiians but stayed at the same level for non-Hawaiians.¹⁴¹

Additionally, the 2016 education assessment conducted by the Office of Hawaiian Affairs found that only “36.1% of Native Hawaiian students were proficient in reading,” and “27.6% of Native Hawaiian students were proficient in math.”¹⁴² Furthermore, “in 2013, Native Hawaiians had the lowest percent [specifically 17.2 percent] of its population obtain a Bachelor’s Degree or higher of all major ethnic groups in Hawai’i [compared to 31.2% of non-Hawaiian students].”¹⁴³ It has been estimated that “in Hawai’i, an adult with a Bachelor’s Degree earns on average \$22,763 more than an adult without,” which is extremely important since Hawai’i is ranked among one of the top US states with the highest cost of living.”¹⁴⁴ According to the National Low Income Housing Commission (NLIHC), Hawai’i is ranked first among states with the most unaffordable housing wage for a 2-bedroom rental home.¹⁴⁵ NLIHC concludes that:

In Hawai’i, the Fair Market Rent (FMR) for a two-bedroom apartment is \$1,780. In order to afford this level of rent and utilities — without paying more than 30% of income on housing — a household must earn \$5,932 monthly or \$71,184 annually. Assuming a 40-hour work week, 52 weeks per year, this level of income translates into an hourly Housing Wage of: \$34.22 per hour.”¹⁴⁶

¹⁴⁰ “1990 Census of Population.” U.S. Census Bureau. 2000.

¹⁴¹ “Income Inequality and Native Hawaiian Communities in the Wake of the Great Recession: 2005 to 2013” Ho‘okahua Waiwai (Economic Self-Sufficiency) Fact Sheet, Vol. 2014, No. 2. OHA Research Division. Retrieved from <http://19of32x2yl33s8o4xza0gf14.wpengine.netdna-cdn.com/wp-content/uploads/2014/05/Income-Inequality-and-Native-Hawaiian-Communities-in-the-Wake-of-the-Great-Recession-2005-2013.pdf>

¹⁴² “Education” OHA. Retrieved from <http://www.oha.org/education/>

¹⁴³ “Income Inequality and Native Hawaiian Communities in the Wake of the Great Recession: 2005 to 2013” 2014. OHA.

¹⁴⁴ IBID

¹⁴⁵ “State Report – Hawaii.” 2016. NLIHC. Retrieved from http://nlihc.org/sites/default/files/oor/files/reports/state/OOR_2016_HI.pdf

¹⁴⁶ “State Report – Hawaii.” 2016. NLIHC.

In actuality, the minimum wage for the State of Hawai'i is a measly \$9.25, which according to the Department of Labor is set to increase to \$10.10 as of January 1, 2018.¹⁴⁷ Given these statistics, it is completely understandable that Native Hawaiians feel marginalized and mistreated throughout their own land; yet, while their right to self-governance stands as the best option to restore the lives of Kanaka Maoli, they are right to be leery of any Hawaiian government formation that occurs strictly under federal or state terms, as these US systems and programs have failed to carry any substantial benefit to the Hawaiian people.

Another one of the greatest detriments to the islands and its people, has been the imposition of western values and economic systems that do not align at all with the culture, beliefs, or practices of these indigenous peoples. The forced assimilation of Natives into western society, with its basis on foreign principles like private property and capitalism, has had undeniable impacts on these groups' homelands and lifestyles. One of the greatest examples of this disconnect between Hawaiian philosophy and US endeavors has been the controversy over the development of the Thirty Meter Telescope (TMT) on Mauna Kea, the most sacred mountain to Kanaka Maoli located on the Big Island, and one of the largest volcanos in the world.

Samuel Kane'aloaha Keli'ihomalu is the grandson of Po'okapu Keli'ihomalu.¹⁴⁸ From March to September 2015, he joined dozens of his family and friends protest the initial stages of TMT's construction atop Mauna Kea. Over the summer, he spent a full 3 months camping in his car outside the volcano's Visitor Center, located at roughly 9,200 ft. elevation.¹⁴⁹ What Samuel and hundreds of Hawaiians gathered atop Mauna Kea to protest was the insufficient environmental

¹⁴⁷ "Minimum Wage and Overtime." State of Hawaii - Wage Standards Division. Retrieved from <http://labor.hawaii.gov/wsd/minimum-wage/>

¹⁴⁸ Sam is one of my dearest friends, who I attended high school with on the Big Island.

¹⁴⁹ "FAQ - Maunakea Visitor Information Station." Mauna Kea Support Services / Mauna Kea Visitor Information Station. Retrieved from <http://www.ifa.hawaii.edu/info/vis/visiting-mauna-kea/faq.html>

review and lack of community engagement that was conducted by TMT's management team, TMT Corporation. According to Samuel, the company lied about an alleged 8 years of large scale community surveys conducted across the islands, gathering Native Hawaii and Hawai'i residents' opinions about the project. In actuality he said a few town meetings on various islands were only held once the grant and construction plans were already secured. Mauna Kea also possesses a sacred body of water, Lake Wai'au, which Samuel argued would be jeopardized by contaminants in the runoff from things such as the use of dynamite and harmful chemicals in the construction and upkeep of the TMT facilities.¹⁵⁰

Caring volunteers would bring food and drink to Samuel and others every day. The constitutional gatherings did not always stay peaceful, as many arrests were made by Department of Land and Natural Resources (DLNR) officers. Samuel recalled a night in which he witnessed several people arrested who had been sleeping in tents along the highway leading to the Visitor Center; he evaded arrest by remaining in his car but was still issued a citation. Samuel recognized that most of the law enforcement officials were actually in support of the protests, many of them Hawaiians themselves, but defaulted to carrying out these actions as they lamented, "it's our job." He even witnessed some officers eyes fill with tears due to their perceived positions of opposition to their community members' cause.¹⁵¹

In the end, Samuel stated that the protests were extremely effective and a court order has halted the construction of TMT until there is a new, extensive environmental review conducted, as well as broad community support of the project. Samuel is very optimistic that this ruling has postponed the construction indefinitely and he believes TMT Corporation will be forced to find a new location from lack of vast community support. According to Samuel, although ancient

¹⁵⁰ Keliioomalū. Personal Interview. 2017.

¹⁵¹ IBID

Polynesians were the best sea navigators because of their understanding of the stars, he believes that Hawaiians' connection to and respect of astronomy has been exploited for scientific developments, like TMT, that are actually contrary to Native values. He said that Hawaiian culture is based on fostering a love and knowledge of your home on Earth, rather than being concerned with things beyond, especially when they bring about potential harms to the environment and sacred sites.¹⁵²

What the *A'ole TMT*¹⁵³ Protests reveal about the real issues at the heart of this debate, are not just the apparent conflict between Hawaiian culture and religion over modern business and science, but more importantly the disregard for Native voices by local, state and federal governments when Hawaiians do in fact mobilize and demand recognition of their interests, which they have been entitled too since President Grover Cleveland first solidified Hawaiian rights to self-governance in 1893 and President Bill Clinton again in 1993.

Unsurprisingly, Samuel and his family members are not in support of federal recognition or US government sponsored nation building, because they are among many Hawaiians who view it as a trap that will subject Kanaka Maoli and the islands to more unwanted legislation, detrimental projects and land theft. He is also a personal supporter of Hawaiian independence, of the opinion that if the Hawaiian Kingdom had remained a sovereign nation, the islands and its people would be living more prosperous lives than they are today under US dominion.¹⁵⁴

The discontent with US control over Hawaiian affairs however does not end at Mauna Kea. Hawaiians have and continue to actively protest development projects such as: a “20-mile commuter rail line project [that] didn't fully consider Native Hawaiians burial grounds” in

¹⁵² Keliioomaluu, 2017.

¹⁵³ Translation: No TMT

¹⁵⁴ Keliioomaluu, 2017.

Honolulu;¹⁵⁵ an inter-island super ferry that would greatly endanger sea life; controversial military training at Pohakuloa on the Big Island;¹⁵⁶ and water rights specifically on Maui, where businesses are diverting precious water sources from areas with dense Hawaiian populations, for use in upscale hotel and new suburban developments with mostly white demographics.¹⁵⁷

This list of Hawaiian grievances with US government facilitated projects that threaten Hawai'i's natural resources, sacred sites, and the people's ways of life, continues to grow. Despite legislation in place that requires "local, state and federal agencies to consult with the Hawaiian community when there's the potential to unearth remains or infringe upon traditional cultural practices,"¹⁵⁸ the views of Kanaka Maoli are often pushed aside. And, given the data discussed earlier that US institutions and programs are inadequately improving the conditions of Native Hawaiians, the idea that federal recognition will provide the best resolution to these qualms is simply not realistic.

In response to the issue of US federal recognition of Native Hawaiians, Samuel posed a challenging question. He asked, "What does America get out of Hawai'i that it needs, or couldn't get from any of its other states?" Though it may be a hard pill to swallow for some, to him the answer is nothing, except for a strategic military base in the Pacific, which also implicates Hawaiians in wars the majority do not want anything to do with. According to Samuel, "Hawai'i doesn't want America or need it; and America doesn't need Hawaii, but it wants it. And when America wants something, it will not give up till everyone in opposition is silenced."¹⁵⁹ Although the severity of this thought does not apply to every Hawaiian, the context behind it is a valid call

¹⁵⁵ Grube, 2016.

¹⁵⁶ "VIDEO: Gathering To Protect Pohakuloa." Big Island Video News. March 30, 2017. Retrieved from <http://www.bigislandvideonews.com/2017/03/30/video-gathering-to-protect-pohakuloa/>

¹⁵⁷ Keliioomalū, 2017.

¹⁵⁸ Grube, 2016.

¹⁵⁹ Keliioomalū, 2017.

for concern. The history of Hawai'i's loss of independence, the inability of the US to ever adequately provide reparations for this injury, and the failed and/or unwanted moves toward federal recognition, all have generated similarly charged feelings in the hearts of many Hawaiians over the years.

Federal recognition represents to most Kanaka Maoli: a continued undermining rather than advancement of Hawaiian interests and wellbeing; a loss of control and right to land, rather than addition; and the elimination of any prospect of Hawaiian independence in return for a controversial Hawaiian governing entity that will not adequately champion Hawaiian rights against the US, even if it truly wanted to. Although the greatest benefit of federal recognition is the immunity from constitutional challenges to Hawaiian trusts, programs, and institutions, this does not outweigh the sum of its disadvantages. A potential resolution for Hawaiians to still receive this immunity, yet not fulfill the other components of federal recognition, could be through Congress passing a policy that specifically characterizes Native Hawaiians as a special political class, rather than suspect, racial class. However, regardless of how this is done, there is an obvious imperative that the US needs to clarify Native Hawaiians' special relationship with it. Furthermore, if the US fails to improve its Native Hawaiian programs in the coming years, the US should conduct a survey of Native Hawaiian desires for independence and strongly consider the results, as the US has wrongfully evaded for over a century.

Works Cited

- “A broken trust: the Hawaiian homelands program: seventy years of failure of the federal and state governments to protect the civil rights of native Hawaiians / Hawaii Advisory Committee to the United States Commission on Civil Rights.” United States Commission on Civil Rights. Hawaii Advisory Committee. Washington, D.C. 1991. Retrieved from <https://www.law.umaryland.edu/marshall/usccr/documents/cr12h313z.pdf>
- “About Na’i Aupuni.” Na’i Aupuni. 2017. Retrieved from <http://www.naiaupuni.org/about.html>
- “About.” Office of Hawaiian Affairs. 2017. Retrieved from <http://www.oaha.org/about/>
- “About Pauahi.” Kamehameha Schools. 2017. Retrieved from http://www.ksbe.edu/about_us/about_pauahi/
- “Admission and Program Enrollment.” Kamehameha Schools. 2017. Retrieved from <https://apps.ksbe.edu/admissions/frequently-asked-questions/>
- Altemus-Williams, Imani. "Towards Hawaiian Independence Native Americans warn Native Hawaiians of the Dangers of Federal Recognition." *Intercontinental Cry*. Dec. 7, 2015. Retrieved from <https://intercontinentalcry.org/towards-hawaiian-independence>
- “Akina v. State of Hawaii.” US Court of Appeals for the Ninth Circuit. No. 15-17134. Filed Aug. 29, 2016. Retrieved from <https://cdn.ca9.uscourts.gov/datastore/opinions/2016/08/29/15-17134.pdf>
- Blount, James. *Foreign relations of the US, 1894: Affairs in Hawaii. Report of US Special Commissioner James H. Blount to US Secretary of State Walter Q. Gresham Concerning the Hawaiian Kingdom Investigation*, 53rd Cong. 3rd sess., 1894.
- Chicago-Kent College of Law at Illinois Tech. "Hawaii v. Office of Hawaiian Affairs." Oyez. 2017. Retrieved from <https://www.oyez.org/cases/2008/07-1372>
- Chicago-Kent College of Law at Illinois Tech. "Rice v. Cayetano." Oyez. 2017. Retrieved from <https://www.oyez.org/cases/1999/98-818>
- “Declaration on the Rights of Indigenous Peoples.” United Nations. March 2008. Retrieve from http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
- “Education” OHA. 2017. Retrieved from <http://www.oaha.org/education/>
- “FAQ - Maunakea Visitor Information Station.” Mauna Kea Support Services / Mauna Kea Visitor Information Station. 2017. Retrieved from <http://www.ifa.hawaii.edu/info/vis/visiting-mauna-kea/faq.html>

- “Federal and State Recognized Tribes,” National Conference of State Legislatures (NCSL). March 25, 2017. Retrieved from <http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx#ak>
- “Frequently Asked Questions.” Department of Interior – Indian Affairs. 2017. Retrieved from <https://www.bia.gov/FAQs/>
- “Frequently Asked Questions on Part 50 – The Final Ruling for Procedures Reestablishing a Formal Government-to-Government Relationship with the Native Hawaiian Community.” Sept. 2016. DOI. Retrieved from https://www.doi.gov/sites/doi.gov/files/uploads/external_faqs_on_part_50_final_rule_9.2.1.16_final.pdf
- Gaddis, Nate. “Analysis: Who Owns Hawaii?” Jan. 31, 2014. Big Island Now. Retrieved from <http://bigislandnow.com/2014/01/31/analysis-who-owns-hawaii/>
- Goo, Sara Kehaulani. "After 200 years, Native Hawaiians make a comeback" PewResearchCenter. April 6, 2015. Retrieve from <http://www.pewresearch.org/fact-tank/2015/04/06/native-hawaiian-population/>
- Grube, Nick. “Hawaiian Federal Recognition: The Lessons from Standing Rock.” Dec. 19, 2016. Civil Beat. Retrieved from <http://www.civilbeat.org/2016/12/hawaiian-federal-recognition-the-lessons-from-standing-rock/>
- “HAWAIIAN HOMES COMMISSION ACT, 1920 (Act of July 9, 1921, c 42, 42 Stat 108).” Department of Hawaiian Home Lands. Retrieved from http://www.capitol.hawaii.gov/hrscurrent/vol01_ch0001-0042f/06-Hhca/HHCA_.htm
- “Home.” Native Hawaiian Roll Commission – Kanaiolowalu. 2017. Retrieved from <http://kanaiolowalu.org/>
- “Income Inequality and Native Hawaiian Communities in the Wake of the Great Recession: 2005 to 2013” Ho‘okahua Waiwai (Economic Self-Sufficiency) Fact Sheet, Vol. 2014, No. 2. OHA Research Division. Retrieved from <http://19of32x2yl33s8o4xza0gf14.wpengine.netdna-cdn.com/wp-content/uploads/2014/05/Income-Inequality->
- Ho‘okahua Waiwai (Economic Self-Sufficiency) Fact Sheet, Vol. 2014, No. 2. OHA Research Division. Retrieved from <http://19of32x2yl33s8o4xza0gf14.wpengine.netdna-cdn.com/wp-content/uploads/2014/05/Income-Inequality-and-Native-Hawaiian-Communities-in-the-Wake-of-the-Great-Recession-2005-2013.pdf>
- “John Doe v. Kamehameha Schools.” US Court of Appeals for the Ninth Circuit. No. 09-15448.

- Filed March 2, 2010. Retrieved from <http://cdn.ca9.uscourts.gov/datastore/opinions/2010/03/02/09-15448.pdf>
- Kai-Hwa Wang, Frances. "Dept. of Interior Finalizes Rule to Recognize Native Hawaiian Government." Sept. 23, 2016. NBC News. Retrieved from <http://www.nbcnews.com/news/asian-america/department-interior-finalizes-rule-recognize-native-hawaiian-government-n653631>
- Kai-Hwa Wang, Frances. "Some Protest US Rule for Recognition of Native Hawaiian Government" Sept. 26, 2016. NBC News. Retrieved from <http://www.nbcnews.com/news/asian-america/some-protest-us-rule-recognition-native-hawaiian-government-n654501>
- Kauanui, Kehaulani. "Precarious Positions: Native Hawaiians and US Federal recognition," in *Recognition, Sovereignty Struggles and Indigenous Rights in the United States*. Edited by Amy Den Ouden and Jean O'Brien. Chapel Hill: University of North Carolina Press. 2013.
- Keliioomalua, Samuel Kanealoha. Personal Interview: conducted via telephone by Brieanah Gouveia. March 1, 2017.
- Kennedy, Merrit. "Native Hawaiians now have a pathway to form a government." Sept. 23, 2016. NPR. Retrieved from <http://www.npr.org/sections/thetwo-way/2016/09/23/495212183/native-hawaiians-now-have-a-pathway-to-form-a-government>
- Koh, Howard. "The Burden of Diabetes on the Native Hawaiian and Pacific Islander Community." Nov. 20, 2013. Retrieved from <https://obamawhitehouse.archives.gov/blog/2013/11/20/burden-diabetes-native-hawaiian-and-pacific-islander-community>
- Liliuokalani. *Hawaii's Story*. Japan: Charles E. Tuttle Company. 1964.
- Lyte, Brittany. "Historic Election could return sovereignty to Native Hawaiians." Oct. 30, 2015. American AlJazeera. Retrieved from <http://america.aljazeera.com/articles/2015/10/30/historic-election-could-return-sovereignty-to-native-hawaiians.html>
- Merleaux, April. *Sugar and Civilization: American Empire and the Cultural Politics of Sweetness*. Chapel Hill: University of North Carolina Press. 2015.
- "Minimum Wage and Overtime." State of Hawaii - Wage Standards Division. 2017. Retrieved from <http://labor.hawaii.gov/wsd/minimum-wage/>
- Nakaso, Dan. "US Says sovereignty decision is Hawaiians" Sept. 23, 2016. Star Advertiser. Retrieved from <http://www.staradvertiser.com/2016/09/23/hawaii-news/u-s-says-sovereignty-decision-is-hawaiians/>

- “Native Hawaiian Recognition (Akaka Bill)” House Committee on Natural Resources. 2017. Retrieved from <http://naturalresources.house.gov/issues/issue/?IssueID=8447>
- Osher, Wendy. "Governor Signs Native Hawaiian Recognition Bill into Law." Maui Now. July 6, 2011. Retrieved from <http://mauinow.com/2011/07/07/governor-signs-native-hawaiian-recognition-bill-into-law/>
- Office of the Secretary. “Interior Department Finalizes Pathway to Reestablish a Formal Government-to-Government Relationship with the Native Hawaiian Community.” Sept. 23, 2016. DOI. Retrieved from <https://www.doi.gov/pressreleases/interior-department-finalizes-pathway-reestablish-formal-government-government>
- Pybas, Justin. “Native Hawaiians: The Issue of Federal Recognition.” *American Indian Law Review*. Vol 30. Issue 1. Jan. 1, 2005. p. 185-202; University of Oklahoma Press.
- “Registration Procedures.” Native Hawaiian Roll Commission – Kanaiolowalu. April 12, 2012. Retrieved from <http://kanaiolowalu.org/about/procedures/>
- Richardson, Valerie. "Only 34 Percent of Hawaiians Support Akaka Bill." Human Events. Dec 18, 2009. Retrieved from <http://humanevents.com/2009/12/18/only-34-percent-of-hawaiians-support-akaka-bill/>
- Silva, Noenoe. *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism*. Durham and London: Duke University Press. 2004.
- Sinco Kelleher, Jennifer. "Native Hawaiian Group Adopts Constitution at Convention." US News. Feb. 27, 2016. Retrieved from <https://www.usnews.com/news/us/articles/2016-02-27/native-hawaiian-group-adopts-constitution-at-convention>
- “State Report – Hawaii.” 2016. NLIHC. Retrieved from http://nlihc.org/sites/default/files/oor/files/reports/state/OOR_2016_HI.pdf
- “The Statehood Plebiscite." Statehood Hawaii. May 12, 2009. Retrieve from <http://statehoodhawaii.org/2009/05/12/the-statehood-plebiscite/>
- “Top 50 billionaires 2014, photo 5 of 50” Forbes. Retrieved from <https://www.forbes.com/pictures/mel45hdjl/5-larry-ellison/#799ddcf2580d>
- United States Public Law 103-150, 1993 Joint Resolution of Congress, “To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii,” 103rd Cong., 1st sess. Retrieved from

<https://www.hawaii-nation.org/publawall.html>

US Census Bureau. May 8, 2012. Retrieved from

<https://www.census.gov/2010census/news/releases/operations/cb12-83.html>

“VIDEO: Gathering To Protect Pohakuloa.” Big Island Video News. March 30, 2017. Retrieved from <http://www.bigislandvideonews.com/2017/03/30/video-gathering-to-protect-pohakuloa/>

Vowell, Sarah. *Unfamiliar Fishes*. New York: Riverhead Books. 2011.