

BLUEPRINT FOR CONGRESSIONAL LEGISLATION

Purpose of Legislation

To acknowledge the right of Native Hawaiians to self-determination and a sovereign status, and to provide for the return of lands to Native Hawaiians.

Basis of Claims

1. Agents of the United States, with apparent authority to act on behalf of the United States, participated in activities that contributed significantly to the overthrow of the Kingdom of Hawaii in January 1893 and the subsequent annexation of Hawaii to the United States in 1898;
2. Agents of the United States, with apparent authority to act, also used military force and threats of force in 1887 for the purpose of altering the form of government in the Kingdom of Hawaii to reduce the power of the Native Hawaiian community;
3. The overthrow of the Kingdom of Hawaii was actively opposed by the overwhelming majority of Native Hawaiians;
4. The participation by the United States in such activities violated the Kingdom of Hawaii's right to independence and violated the international law principle of nonintervention in the internal affairs of another nation and thus constitutes a wrong against Native Hawaiians which the United States is obligated to redress;
5. The United States has a legal and moral obligation to return lands to Native Hawaiians and to recognize the right of Native Hawaiians to a sovereign status akin to that of other Native Americans and consistent with the cultural and political traditions of the Native Hawaiian community; and
6. The United States is obligated to restore to Native Hawaiians a substantial portion of the public lands it received in 1898 pursuant to the annexation of Hawaii and is also obligated to provide funds and programs to allow Native Hawaiian people to assume their rightful place in Hawaii.

Land Claims

Pursuant to the obligation of the United States to redress the wrong committed against the Native Hawaiian people through the overthrow of the Kingdom of Hawaii and the subsequent annexation of Hawaii, and pursuant to the commitment of the United States to restore a land base to the Native Hawaiian people, the United States should:

but compensation should be paid for such use at prevailing market rate.

1. Return a significant portion of the public lands obtained by the United States at the time of annexation in 1898 and retained by the United States pursuant to the Hawaii Admission Act. Some parcels should be returned immediately while other parcels could be returned over a 5-10 year period. Lands returned may be leased back to the United States for continued federal use upon a determination by OHA that such use would benefit Native Hawaiians, (Attach list of lands.)
2. Transfer title to Volcanoes National Park and Honaunau National Park on the Island of Hawaii and Haleakala National Park on Maui. These areas would continue to be managed by the National Park Service, in consultation with OHA, for the benefit of Native Hawaiians and all citizens of the United States.

~~3.~~ All lands returned would be held in trust and managed for the benefit of Native Hawaiians by OHA. These lands could be alienated but the overall total acreage of lands held in trust must never be less than 90% of its maximum amount.

to OHA.

~~4. [see attached] H [see attached] (A)~~

Ceded Lands and Hawaiian Homelands

Ceded lands currently held by the State and Hawaiian Homelands were originally part of the lands ceded to the United States in 1898. Under the Admission Act, most of the ceded lands and all of the Hawaiian Homelands were given to the State. The United States should recognize the claims of Native Hawaiians to such lands and aid OHA in negotiating with the State and developing legislation to be adopted by the Congress and the State transferring a portion of the ceded lands and all of Hawaiian Homelands to OHA. All of the functions of the Department of Hawaiian Homelands ~~would~~ *should* also be transferred to OHA.

now controlled by the state

Substantial

Protection for beneficiaries

Submerged Lands

Native Hawaiians have an interest in the living and nonliving resources of submerged lands in the exclusive economic zones surrounding the Hawaiian Islands, Johnston Atoll, Palmyra Island, and Midway Island. In recognition of such interest, the United States should give Native Hawaiians half of all revenues received by the U.S. government from these resources. Native Hawaiians should be allowed to harvest half of the living resources in these areas. Both the living and nonliving resources should be managed by a Board, half of whom should be appointed by OHA, in order to preserve these resources for future generations.

also

in an environmentally sensitive manner designed

Money

To compensate Native Hawaiians for the use of ceded lands since 1898 and for the lands it does not return to Native Hawaiians, the United States should pay money to OHA in the amount of . The money ~~would~~ *should* be held in trust by OHA for the benefit of Native Hawaiians; the principle may be

invested and the interest used for the benefit of Native Hawaiians.

Programs

All existing federal programs benefitting Native Hawaiians ^{should} will be maintained and expanded in order to meet the health, education, ^{of} occupational, and cultural needs of Native Hawaiians. These programs will be monitored and guided by OHA. *Appendix II*
lists the existing programs.

Taxes

There should be no taxes on lands, resources, or revenues returned by the United States to Native Hawaiians and there should be no taxes on income generated by these lands, resources, or revenues. (B)

Enrollment of Native Hawaiians

OHA will establish an official enrollment of Native Hawaiians, including those not residing in Hawaii, for purposes of voting, and receiving benefits, land, and moneys.

Self-Determination and Sovereignty

The United States should acknowledge that

Native Hawaiians, ~~like other Native Americans,~~ have the right to self-determination and the right to govern their affairs in a sovereign status pursuant to their culture, traditions, and current goals. A process should be established to determine the appropriate form through which Native Hawaiians can exercise their right to self-determination. *This process should contain the following elements:*

1. OHA ~~should~~ ^{will} be given federal status by Congress while continuing to maintain its powers and authority under state law.
2. OHA, on behalf of Native Hawaiians, ~~will~~ ^{will} receive all funds and hold title to all lands returned by the federal government.
3. OHA ^{then} will initiate the process of developing a document, similar to a constitution, to govern its affairs when acting in its governmental capacity. This document will be drafted at a gathering of representatives consisting of Native Hawaiians elected from single-member districts constituted in order to ^{provide} equal representation for all Native Hawaiians, including those living outside the state. The gathering will draft a governing document and then recess for three months during which time hearings will be held in each district to receive comments by Native Hawaiians. The gathering will then reconvene and consider changes and prepare a final document.

The final document will be voted upon by Native Hawaiians ~~in a special election~~ and must be ratified by a majority of Native Hawaiians. If this document does not receive a majority vote, ~~the drafting process must begin over again and there will be a second vote.~~ *another gathering will be held to consider revisions, followed by a second ratification vote. The necessary funds for these gatherings, the election of delegates and the ratification ~~process~~ elections, and the community meetings will be provided by Congress.*

by OHA in relation to traditional geographical divisions and

The document drafted may change OHA's name. It may give OHA the power to adopt ordinances for the health, safety, and welfare of Native Hawaiians; the power to levy taxes, zone trust lands, produce income from such lands, regulate conduct on trust lands, and the power to regulate hunting, fishing, gathering, access and other traditional rights and practices of Native Hawaiians.

and
The instrument will include a procedure whereby it can be amended by an appropriate vote of Native Hawaiians

- pursuant to the*
4. ~~The United States will agree to recognize ^{OHA, and any successor organization it may evolve into} the entity developed pursuant to the process set forth above as the sovereign entity of the Native Hawaiian people. This sovereign entity will have the status and powers of a nation akin to that held by other recognized Native American nations, except that the Native Hawaiian sovereign entity will not be under the jurisdiction of or have any involvement with the Bureau of Indian Affairs.~~

Preservation of Native Rights

Native rights, including but not limited to beach access, trail access, fishing, hunting and gathering rights, religious practices, and access to historic and cultural sites, will be preserved in perpetuity for future generations of Native Hawaiians.

Right to Sue

OHA, the sovereign entity, and individual Native Hawaiian should have the right to sue in federal court in order to enforce the provisions of the Congressional legislation.

Native Hawaiians

Definitions

As used in this document, the term

1. "Native Hawaiian" ^{means} any descendent of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii.
2. Office - the Office of Hawaiian Affairs and its successor.
3. Trustees - members of the Board of Trustees of OHA and their successor governing body.

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¶ Specific parcels of land in this land trust could be allocated through a fair system of distribution to individual Native Hawaiians (or corporations beneficially controlled by Native Hawaiians) who will be able to exercise fee and unlimited domain over such parcels, except that they will not be able to alienate them except to other Native Hawaiians (or corporations beneficially controlled by them). Such lands will continue to be considered part of the land trust.

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~~Neither OHA nor any individual Hawaiian Native Hawaiian should be liable for any taxes to the United States, the State of Hawaii or its subdivisions, or any other state for the lands, resources, or revenue returned to them, or for any income generated by these lands, resources, or revenue.~~

A BLUEPRINT
FOR
NATIVE HAWAIIAN SELF-DETERMINATION
AND
LAND CLAIMS

The Office of Hawaiian Affairs is beginning the process of seeking redress for the illegal overthrow of the Kingdom of Hawaii in 1893 and the subsequent loss of land and sovereignty. This process will require input from all sectors of the Hawaiian community, and also from non-Hawaiians, in order to reach a solution that is just and inequitable and which will ~~restore~~ provide the Hawaiian community with the land and resources it deserves. Community meetings will be conducted ~~throughout the~~ ~~community~~ to elicit comments and ideas on how to achieve this goal. To initiate this process, the Trustees of the Office of Hawaiian Affairs offers the following blueprint to provide

an outline for the ~~list of~~ elements that should be included in legislation that would ultimately be adopted by the United States Congress:

I. DECLARATIONS

The Congress should find and declare that:

(A) Prior to Western contact, the Native Hawaiian

people had developed an evolved culture based on qualities of mutual trust, sharing and cooperation, and sensitivity to the environment of the Hawaiian islands and their surrounding waters; they had created works of art of great beauty and had developed a religion based on respect for human life and the interrelationship of all living things.

(B) Subsequent to Western contact, the Hawaiian islands became united under a single leader and ^{an independent} a government was formed; this government -- the Kingdom of Hawaii -- was recognized by many foreign governments as an independent sovereign; this independent ^{Hawaiian} government entered into agreements and treaties with the United States in 1826, 1849, 1875, and 1887 in which the United States recognized the sovereign independence of the Hawaiian nation and pledged itself to perpetual peace and friendship friendly relationships.

?

(c) Nonetheless, in 1887 agents of the United States with apparent authority to act on behalf of the United States used military force and threats of force for the purpose of altering the form of government in the Kingdom of Hawaii to reduce the power of the Native Hawaiians.

(D) Then in 1893, agents of the United States with
apparent authority to act on behalf of the United States
participated in activities that contributed significantly to the
overthrow of the Kingdom of Hawaii, ~~including the landing~~
~~of troops,~~ ^{from the U.S. at Boston} ~~and the positioning of them in a manner designed to~~
~~threaten the monarchy, and the premature recognition of the~~
~~rebel government) prior to the abdication by the Hawaiian~~
~~queen, Liliuokalani.~~ ^{U.S. troops} ^{in Honolulu} ~~by the U.S. Minister to the Kingdom of Hawaii, John L. Stevens,~~
The facts on this matter are uncontested,
and can be summarized from the majority report of the 1981-83 Native
Hawaiians Study Commission.

[Keale testimony, pp. 3-4 9]

(E) When ~~the~~ Queen ~~to~~ Liliuokalani did subsequently ~~at~~ abdicate, she abdicated to the United States government rather than to the rebel troops because she felt confident that the United States would not support such an illegal overthrow but would instead seek to restore her to her throne once the ~~fact~~ facts about the overthrow were understood in Washington. She issued a formal protest stating ~~[quote]~~ that she was yielding

"to the superior force of the United States of America
... until such time as the government of the United
States shall upon the fact... reinstate me... as
constitutional sovereign of the Hawaiian Islands."
[3 R. Kuyken dall ⁶³ ~~63~~]

[expand?]
[?]
[add equitable claim]

after receiving a report his special emissary James H. Blount, the former chair of the House of Representatives Committee on Foreign Affairs, who had spent four months in Honolulu investigating the situation and ~~who~~ then recommended that ~~the~~ Queen Liliuokalani be restored to power.

(F) President Grover Cleveland did, in fact, ^{conclude} ~~feel~~ that

this overthrow was illegal, ~~his statement of~~ In his

subsequent message to Congress, ^{President Cleveland} ~~he~~ observed that Minister

Stevens and the military forces of the U.S.S. Boston had acted beyond

their proper authority, under the pretense of protecting U.S. life and

property. He concluded that the United States should correct such

illegal acts by making reparations to the Hawaiian people:

"... By an act of war, committed with the participation of the diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done ~~us~~ which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair."

[President's Message Relating to the Hawaiian Islands, H.R. Exec. Doc., No. 47, 53rd Cong. 2d Sess. IX-XIV (1893).]

(6) The overwhelming majority of Native Hawaiians actively opposed the overthrow of the Kingdom of Hawaii; such opposition was illustrated, for instance, by [Melody - 1895 rebellion] *

the Native Hawaiian community,
and

(H) Despite the efforts of Queen Liliuokalani, President Cleveland, ~~and~~, the U.S. Congress refused to act to ~~restore~~ redress the illegal actions of the U.S. agents who had ^{militarily} ~~supported and~~ aided the ~~the~~ overthrow.

(I) In 1898, the United States annexed Hawaii through a joint resolution rather than a treaty, ~~so~~ because the supporters of annexation were not able to assemble the two-thirds majority in the Senate required for ratification. [Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States, 30 Stat. 750 (1898).]

The legal effect of such a joint resolution is still open to question.

(J) ~~[Old 97 (d)]~~

↳ the participation ^{by} ~~of~~ agents of the United States

acting with apparent authority of the United States in activities

that led to the overthrow of the Kingdom of Hawaii and the

subsequent annexation of Hawaii violated the Kingdom of Hawaii's

right to independence and violated the international law

principle of nonintervention in the internal affairs of

another nation and thus constitutes a wrong against the Native

Hawaiian community which the United States is obligated to

redress.

(K) As a result of the annexation of Hawaii, the United States government assumed title to approximately 1.75 million acres of Government and Crown Lands ~~to~~ that had been held by the Kingdom of Hawaii in trust for the Hawaiian people.

[Keale testimony pp 4-5]

~~When~~ After

(L) ~~At the time of state~~ Hawaii ~~was~~ became a state in

1959, about ^{1.35} ~~1.3~~ million acres of ^{the ceded} lands were ~~returned~~ transferred

from the federal government to the state of Hawaii; ~~After~~ with

~~has~~ a trust obligation that includes Native Hawaiians ^{as} ~~in the list~~

~~list of~~ beneficiaries. In 1980, the Hawaii State Legislature stated that

OHA should receive 20% of the funds derived from these lands.

~~HA~~ [Haw. Rev. Stat. sec 10-13.5] This figure ~~does not~~

understates the limit of Native Hawaiians to these lands

and does not adequately compensate them for the loss

of these lands. Furthermore, the State has not been forthcoming

with the full 20% of the revenues generated by these

lands and substantial disputes exist over the ~~very~~ manner

in which this matter should be resolved.

(11) The federal government has retained about 432,000 acres of these ceded lands, ~~and~~ as listed in Appendix I. These lands are of great value.

Many are in choice locations and all ~~could~~ are honored as special lands by Native Hawaiian communities. If these lands had to be purchased at fair market value today, the federal government would have to pay \$ _____ ~~The rent~~

If the federal government had to pay to rent for these lands since 1898, it would have had to pay \$ _____ for the use of these lands.

(N) Because of the illegal actions of its agents ^{outlined above} ~~found~~
~~the Native~~ and because of the enormous benefits it has obtained
from ^{the} uncompensated use of ~~Native~~ illegally obtained lands,
the United States is obligated ⁽¹⁾ to restore to Native Hawaiians
a substantial portion of the lands it received in 1898, ~~for~~ ~~the United States~~
~~obligated~~ ⁽²⁾ to provide funds and programs to allow Native
Hawaiians to assume their rightful place in Hawaii, and
~~the United~~ ⁽³⁾ to recognize the right of Native Hawaiians to
self-determination and a sovereign status ~~that~~ consistent
with the cultural and political traditions and current
aspirations of the Native Hawaiian community -