IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

EARL F. ARAKAKI, et al,	**CIVIL NO. 02-00139 SOM-KSC**
	(Declaratory Judgment)
Plaintiffs,	
	OFFICE OF HAWAIIAN AFFAIRS
vs.	DEFENDANTS' MEMORANDUM
	IN SUPPORT OF MOTION
LINDA LINGLE, et al.,	
Defendants.	

OFFICE OF HAWAIIAN AFFAIRS DEFENDANTS'
MEMORANDUM IN SUPPORT OF MOTION

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OFFICE OF HAWAIIAN AFFAIRS DEFENDANTS'
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I. INTRODUCTION.

This Motion is necessary to enable this Honorable Court to find the facts and conclusions of law relevant to the legal relationship between Native Hawaiians[1] and

[1] In light of the claims presented by Plaintiffs, in this memorandum, the OHA Defendants use the term "Native Hawaiian" in the same manner it is used in the Hawaiian Homelands Homeownership Act of 2000, Pub. L. No. 106-568, 114 Stat. 2868 (2000), sec. 801(a) (Exhibit A), where this term is defined as any individual who is (A) a citizen of the United States and (B) a descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawai`i, as evidenced by (i) genealogical records, (ii) verification by kupuna (elders) or kama`aina (long-term community residents); or (iii) birth records of the State of Hawai`i. This is essentially the definition that has been used by Congress in legislation dealing with Native Hawaiians since 1974. OHA Defendants point out that the Hawaiian Homes Commission Act, 1920, 42 Stat. 108 (1921), as amended, defines "native Hawaiian" to include persons with 50% Hawaiian blood and also permits persons with 25% Hawaiian blood to hold leases as successors.

the governments of the United States and the State of Hawai`i. Although the relationship between Native Hawaiians and the United States has had its own unique history and although the United States has not formally included Native Hawaiians in the category of a federally-recognized tribe, the United States government has established and maintained a unique "special relationship" and trust relationship with Native Hawaiians that is comparable in most relevant legal respects to the relationship it has with the 557 federally-recognized tribes. Most significantly, the U.S. Congress has not excluded the Native Hawaiian People from beneficial legislation enacted for Native Americans and hence they have a dramatically different status from that held by unacknowledged mainland Indian tribes. *See Rice v. Cayetano (II),* 963 F.Supp. 1547, 1553-54 (D.Hawai`i 1997), *aff'd* 146 F.3d 1075 (9th Cir. 1998), *rev'd on other grounds*, 528 U.S. 495 (2000).

This Memorandum and the accompanying declarations set forth the facts and law that establish (1) the status of the Native Hawaiian People as native, indigenous, and aboriginal people under U.S. and international law, (2) the trust responsibility of the United States toward the Native Hawaiian People and its delegation of this responsibility, in part, to the State of Hawai`i, and (3) the role of the 1959 Admission Act as a settlement of part of the claims of the Native Hawaiian People and the delegation to the State of Hawai`i of the responsibility to continue the settlement

process. The memorandum then, in the alternative, explains why Plaintiffs' claim should be dismissed as a nonjusticiable political question. The findings of fact and conclusions of law on these matters are central to the challenge filed by Plaintiffs and are preliminary issues that must be addressed and resolved before any of the other issues raised by Plaintiffs can be addressed.

OHA incorporates the standard of review in the Memorandum filed by the State Council of Hawaiian Homestead Associations.

II. NATIVE HAWAIIANS ARE A NATIVE PEOPLE AND/OR AN INDIGENOUS OR ABORIGINAL GROUP UNDER U.S. AND INTERNATIONAL LAW.

A. The United States Has Recognized and Acknowledged Repeatedly that Native Hawaiians are a Native People and an Indigenous or Aboriginal Group.

The United States Congress has explicitly found on numerous occasions that Native Hawaiians are an indigenous people and that their political status under U.S. law is comparable to that of American Indians. *See, e.g.*, Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawai`i, Pub. L. 103-150, 107 Stat. 1510 (1993)(hereafter cited as Apology Resolution), Exhibit B; Hawaiian Homelands Homeownership Act of 2000, Pub. L. 106-568, 114 Stat. 2868 (2000), sec. 202(13), Exhibit A; 2002 Native Hawaiian Education Act, Pub. L. 107-110, 115 Stat. 1425, 20 U.S.C. sec. 7512(1),

Exhibit C, ("Native Hawaiians are a distinct and unique indigenous people"). The Congress has affirmed this status repeatedly by treating Native Hawaiians as Native Americans and by including Native Hawaiians in legislation and programs designed to assist Native Americans, as listed, for instance, in Section 202(14)-(15) of the Hawaiian Homelands Homeownership Act of 2000 and in the 2002 Native Hawaiian Education Act, 20 U.S.C. sec. 7512(13).[2]

This Honorable Court has explained that: "More than a decade ago, now-Chief Judge David Ezra analogized native Hawaiians to American Indian tribes." *Arakaki v. Cayetano*, 198 F.Supp.2d 1165 (D.Hawai`i 2002)(*citing Naliielua v. Hawaii*, 795 F.Supp. 1009, 1012-13 (D.Haw. 1990), *aff'd*, 940 F.2d 1535 (1991)). Judge Ezra reaffirmed this conclusion in *Pai 'Ohana v. United States*, 875 F. Supp. 680 (D. Haw. 1995), *aff'd*, 76 F.3d 280 (9th Cir. 1996), where he quoted from his conclusion in

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[2] One of the most explicit recent example of Congress's recognition that Native Hawaiians have the equivalent status of Indian tribes can be found in the preferential program established in Section 8014(3) of the Fiscal Year 2002 Defense Appropriations Act, Pub. L. No. 107-117, 115 Stat. 2230, 2272 (2002), Exhibit D, and Fiscal Year 2001 Defense Appropriations Act, Pub. L. No. 106-259, 114 Stat. 656, 677 (2000), which defined those Native American organizations eligible for the preference as "an Indian tribe, as defined in 25 U.S.C. 450b(e), or a Native Hawaiian organization, as defined under 15 U.S.C. 637(a)(15)." In other words, Congress has explicitly referred to a "Native Hawaiian organization" as the equivalent to an "Indian tribe," thus confirming once again the political status of the Native Hawaiians and the "special relationship" that exists between the United States and them.

Naliielua that "[a]lthough Hawaiians are not identical to the American Indians whose lands are protected by the Bureau of Indian Affairs, the court finds that for purposes of equal protection analysis, the distinction ... is meritless. Native Hawaiians are people indigenous to the State of Hawai`i, just as American Indians are indigenous to the mainland United States ..." *Id.* at 697 n.35. He later characterized the *Naliielua* holding by saying that "[t]he court was convinced that the relationship between the Native Hawaiians and the aboriginal people of the Hawaiian Islands and the State of Hawai`i was sufficiently similar to that of American Indians and the United States to bypass the strict scrutiny requirement." *Rice v. Cayetano (I),* 941 F. Supp. 1529, 1541 (D. Haw. 1996).

Judge Alan C. Kay has similarly recognized that Native Hawaiians are "people indigenous to the United States." *Kahawaiolaa v. Norton*, 222 F.Supp.2d 1213, 1220 n. 9 (D.Hawaii 2002) (*quoting from* Felix S. Cohen's *Handbook of Federal Indian Law* 797-98 (2nd ed., Rennard Strickland et al. eds. 1982)). He has also concluded (two years after the Supreme Court's opinion in *Rice v. Cayetano*) that "[t]he appropriate standard of review" for a "constitutional challenge" to governmental decisions regarding recognition of Native Hawaiians "if justiciable, would be the rational basis standard." *Id.* at 1223 n. 14 (*citing Morton v. Mancari*, 417 U.S. 535, 555 (1974); *United States v. Nuesca*, 945 F.2d 254, 257 (9th Cir. 1991); and *Duro v.*

Reina, 860 F.2d 1463, 1467 (9th Cir. 1988)). Finally, this Honorable Court has also recognized the importance of and need to protect Native Hawaiian rights and practices. *Malama Makua v. Rumsfeld*, 163 F.Supp.2d 1202,1219-22 (D.Hawai`i 2001).

The Ninth Circuit has been consistent in recognizing that Native Hawaiians are the indigenous people of Hawai`i and has upheld and enforced the separate programs that have been established for them. *See, e.g., Pai `Ohana v. United States*, 76 F.3d 280 (9th Cir. 1996)(recognizing the existence and legitimacy of Native Hawaiian tenant rights created under the Hawai`i State Constitution and state statutes); *United States v. Nuesca,* 945 F.2d 254, 257 (9th Cir. 1991)(recognizing Native Hawaiians as "indigenous to regions now part of the United States"); *Napeahi v. Paty*, 921 F.2d 897 (9th Cir. 1990)(concluding that submerged lands surrounding the Hawaiian Islands were included in the public land trust, the proceeds of which should be used for the benefit of Native Hawaiians pursuant to the 1959 Admission Act, Pub. L. 86-3, 73 Stat. 4(1959)).

Historically, the federal government has consistently related to Native Hawaiians as indigenous people. *See* Declaration of David H. Getches. U.S. executive-branch officials and members of Congress explicitly recognized that Native Hawaiians had the same rights as other Native Americans in the hearings that led to

the passage of the Hawaiian Homes Commission Act, 1920, 42 Stat. 108 (1921). *See, e.g., Ahuna v. Dept. of Hawaiian Home Lands*, 640 P.2d 1161, 1167 (Hawai`i 1982) (quoting Secretary of the Interior Franklin K. Lane as referring to native Hawaiians as "our wards ... for whom in a sense we are trustees"). *See also Hearings Before the House Committee on the Territories on the Rehabilitation and Colonization of Hawaiians and Other Proposed Amendments to the Organic Act of the Territory of Hawai`i*, 66th Cong., 129-30 (1920)(quoting Secretary of the Interior Franklin D. Lane as saying that the basis for granting special programs for native Hawaiians is "an extension of the same idea" that justifies granting such programs for Indians); *id.* at 169 (quoting Representative Curry, the Chair of the Committee, as saying: "And the Indians received lands to the exclusion of other citizens. That is certainly in line with this legislation, in harmony with this legislation."); *id.* at 170 (quoting Chair Curry, in response to a question from Representative Dowell about whether native Hawaiians might be different because "we have no government or tribe or organization to deal with," as saying that "We have the law of the land of Hawai`i from ancient times right down to the present where the preferences were given to certain classes of people") "In the opinion of your committee there is no constitutional difficulty whatever involved in setting aside and developing lands of the Territory for Native Hawaiians only." House Rpt. No. 839, 66th Cong., 2nd Sess.

at 4 (1920).

The Hawai`i Supreme Court has also recognized that Native Hawaiians have the same legal status as other Native Americans and have separate and distinct legal rights under state law. *Ahuna v. Department of Hawaiian Home Lands*, 64 Hawaii 327, 339, 640 P.2d 1161, 1168-69 (1982)(recognizing that Native Hawaiians have the same legal status as other native peoples); *Public Access Shoreline Hawaii v. Hawai`i County Planning Comm'n.*, 79 Hawaii 425, 903 P.2d 1246 (1995)(recognizing and explaining the traditional and customary rights of Native Hawaiians); *Ka Pa`akai O Ka `Aina v. Land Use Commission*, 94 Hawaii 31, 46, 7 P.3d 1068, 1083 (2000)(confirming that "to the extent feasible when granting a petition for reclassification of district boundaries," the Land Use Commission must "protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians"); *OHA v. State*, 96 Hawaii 388, 401, 31 P.3d 901, 914 (2001)(reiterating that "the State's obligation to native Hawaiians is firmly established in our constitution").[3]

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[3] *See also Office of Hawaiian Affairs (OHA) v. Housing and Community Development Corporation of Hawaii (HCDCH)*, Civil No. 94-0-4207 (SSM)(Haw. 1st Cir. Dec. 5, 2002), slip op. at 6: "Native Hawaiians continue at present to comprise *a distinct and unique indigenous people* with a historical continuity to the original inhabitants of the Hawaiian archipelago whose society was organized as a Nation prior to the arrival of the first non-indigenous people in 1778." (emphasis added)(*citing* The Native Hawaiian Health Care Improvement Act of

Plaintiffs have argued in earlier submissions that although Native Hawaiians may once have been a distinct native group, they can no longer claim that status because they have now become assimilated. Knowledgeable experts have found that current factual evidence does not support that conclusion. *See* Declarations of Davianna P. MacGregor and Jon K. Matsuoka. *See also* U.S. Depts. of Justice and Interior, *From Mauka to Makai: The River of Justice Must Flow Freely* at ii (Report on the Reconciliation Process Between the Federal Government and Native Hawaiians, Oct. 23, 2000), Exhibit E, concluding that: "It is evident from the documentation, statements, and views received during the reconciliation process undertaken by Interior and Justice pursuant to Public Law 103-150 (1993), that *the Native Hawaiian people continue to maintain a distinct community* and certain governmental structures and they desire to increase their control over their own affairs and institutions." (Emphasis added.)[4] Even more recently, the U.S. Congress

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1992 (hereafter cited as 1992 Health Care Act), 42 U.S.C. secs. 11701-14 (1992), Findings, para. 1, and The Native Hawaiian Education Act of 1994 (hereafter cited as 1994 Education Act), 20 U.S.C. secs. 7902-12 (West Supp. 1998), para. 1; An Act Relating to Hawaiian Sovereignty, ch. 359, 1993 Haw. Sess. Laws 1009 (hereafter cited as Act 359 (1993)), Findings, para. 1). This case can be found at courts.state.hi.us/page_server/Courts/Circuit/3931976B5358681AF29B21E21F.

[4] The First Circuit Court of Hawai`i made a similar finding of fact in its recent decision in *OHA v. HCDCH*, Civil No. 94-0-4207(SSM)(Haw.1st Cir. Dec. 5, 2002), slip op. at 45: "The Native Hawaiian People continue to be a unique and distinct people with their own language, social system, ancestral and national

has declared that: "Despite the consequences of over 100 years of nonindigenous influence, the Native Hawaiian people are determined to preserve, develop, and transmit to future generations their ancestral territory and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions." 2002 Native Hawaiian Education Act, 20 U.S.C. sec. 7512(20). This conclusion is also found in the 1992 Health Care Act, Findings, para. 1, Exhibit F, and Act 359 (1993), Findings, para. 1, Exhibit G.

B. Native Hawaiians Are a Native People or an Indigenous or Aboriginal Group Under International Law.

International law scholar S. James Anaya explains in his Declaration that Native Hawaiians meet the requirements of the accepted international law definition of indigenous people, which defines such groups in terms of (a) preexistence (the population is descended from persons who functioned as an autonomous community in an area prior to the arrival of another population), (b) nondominance (their cultural style usually does not dominate the area at present), (c) cultural difference (their culture is different from the dominant culture), and (d) self-identification as indigenous (the people identify themselves and the group as indigenous). As the Declarations of Davianna P. MacGregor, Jon K. Matsuoka, and Brian J. Murton

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lands, customs, practices and institutions."

explain, Native Hawaiians certainly meet the requirement of "preexistence," "nondominance," "cultural distinctiveness," and "self-identification as indigenous."

Although Plaintiffs have contended in previous filings that Native Hawaiians are not "indigenous" because they were not in Hawai`i for as long as Native Americans inhabited North America, Native Hawaiians were in Hawai`i long before Maoris came to New Zealand (Aotearoa), and Maoris have always been viewed as indigenous. *See, e.g., Maori Fisheries Settlement Case (New Zealand)*, Human Rights Committee, CCPR/C/70/D/547/1993 (Nov. 15, 2000)(discussed in Professor Anaya's Declaration). In his Declaration, Professor Murton explains that Maori are universally accepted as the indigenous people of New Zealand (Aotearoa), even though they arrived in New Zealand after the Native Hawaiians arrived in Hawai`i, and concludes that "if Maori are considered to be indigenous people in New Zealand, the Native Hawaiians should also be considered to be indigenous people in Hawai`i and the United States."

III. THE UNITED STATES HAS RECOGNIZED AND ACCEPTED A TRUST RESPONSIBILITY TOWARD THE NATIVE HAWAIIAN PEOPLE AND HAS DELEGATED THAT TRUST RESPONSIBILITY IN PART TO THE STATE OF HAWAI`I.

A. The United States Has Recognized and Accepted a Trust Responsibility Toward the Native Hawaiians.

A recent authoritative report issued by the U.S. Departments of Justice and

Interior acknowledged that the lands ceded to the United States when Hawai`i was annexed in 1898 were "impressed with a trust for the Native Hawaiian common people." U.S. Depts. of Justice and Interior, *From Mauka to Makai: The River of Justice Must Flow Freely* at ii (Report on the Reconciliation Process Between the Federal Government and Native Hawaiians, Oct. 23, 2000).

Although in earlier periods the United States had entered into explicit treaties with native people whose land was taken, after the enactment of the Appropriations Act of 1871, ch. 120, sec. 1, 16 Stat. 544, 566, codified at 25 U.S. C. sec. 71, the United States entered into no further formal treaties. *See generally* Felix Cohen's *Handbook of Federal Indian Law* 105-07 (Rennard Strickland et al. eds., 1982 edition); *Rice v. Cayetano (II)*, 963 F. Supp. 1547, 1553 (D. Haw. 1997), *aff'd* 146 F.3d 1075 (9th Cir. 1998), *rev'd on other grounds,* 528 U.S. 495 (2000). The history of the status and treatment of Native Hawaiians (and that of the Alaska Natives) is thus different from that of American Indians in the 48 contiguous states. Native Hawaiians "developed their own trust relationship with the Federal Government as demonstrated by the passage of the [Hawaiian Homes Commission Act] and because Native Hawaiians were not being excluded from beneficial legislation in the same manner as unacknowledged mainland United States Indian tribes." *Rice v. Cayetano*

(II), 963 F. Supp. at 1553.[5]

In the 2002 Native Hawaiian Education Act, Congress explained that it had "affirmed the special relationship between the United States and Native Hawaiians in the Hawaiian Homes Commission Act, 1920," *id.* sec. 7512(8), and had "reaffirmed *the trust relationship* between the United States and the Hawaiian people" in the 1959 Admission Act. *Id.* sec. 7512(10) (emphasis added); *see also id.* sec. 7512(12)(B)(Native Hawaiians are "the indigenous people of a once sovereign nation as to whom the United States has established *a trust relationship*" (emphasis added)).

The 1959 Admission Act plays the central role in defining the relationships

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[5] The First Circuit Court of the State of Hawai`i has similarly focused on the enactment of the Hawaiian Homes Commission Act, 1920, as explicit evidence of the recognition of a trust relationship between the United States and the Native Hawaiian People. *OHA v. HCDCH*, Civil No. 94-0-4207(SSM)(Haw. 1st Cir. Dec. 5, 2002), slip op. at 14 (concluding that the 1921 enactment of the Hawaiian Homes Commission Act affirmed "the trust relationship between the United States and the native Hawaiians, positing that it was constitutionally proper for the United States government to establish special programs for the Native Hawaiian People," *citing* the 1992 Health Care Act, Findings, para. 13; 1994 Education Act, Findings, para. 8; Hawaiian Homelands Homeownership Act of 2000, Sec. 202(3)). This recent decision also observed that "Congress reaffirmed in the [1992] Health Care Act that the United States had recognized a 'trust' relationship with native Hawaiians for many years, and in recognition of that relationship had extended benefits to them similar to those provided to American Indians [in] various federal statutes [listing several]..." *Id.* at 28-29 n. 76.

between the United States, the Native Hawaiian People, and the State of Hawai`i. In Section 5(b) of the Admission Act, the United States transferred about 1.2 million acres of the lands it had received by cession in 1898, plus another 200,000 acres of Hawaiian Home Lands, to the new State of Hawai`i, Exhibit H. According to Congress's subsequent explanation of this action, the United States "*reaffirmed the trust relationship* which existed between the United States and the Hawaiian people by retaining the exclusive power to enforce the [Hawaiian Home lands] trust, including the power to approve land exchanges, and legislative amendments affecting the rights of beneficiaries under such Act." 1992 Health Care Act, 42 U.S.C. § 11701(15)(emphasis added). Section 5(f) of the Admission Act explicitly provided that the lands granted to the State of Hawai`i upon admission were to be held by the State as "a public trust" and that the revenues generated by these lands were to be used for five specific purposes including "the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended."[6]

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[6] The U.S. Congress explained in the 1993 Apology Resolution that the transfer of the Crown and Government Land from the Kingdom of Hawai`i was made "without the consent of or compensation to the Native Hawaiian people of Hawai`i or their sovereign government." The First Circuit Court of the State of Hawai`i ruled recently that the Apology Resolution "is binding upon this court" as a "statute of the United States" and "this court must take judicial notice of its findings pursuant to Section 202(b) of the Hawai`i Rules of Evidence (Mandatory Judicial Notice of Law)." *OHA v. HCDCH,* Civil No. 94-0-4207(SSM)(Haw. 1st Cir. Dec. 5, 2002), slip op. at 26-27 and n. 71.

Thus, in becoming a state, "Hawai`i acknowledged a trust obligation toward native Hawaiians as a condition of admission to the union." *Rice v. Cayetano*, 146 F.3d 1075, 1080 (9th Cir. 1998).

The Ninth Circuit has recognized repeatedly that the Admission Act's ceding of land to the new State of Hawai`i in the 1959 Admission Act gave rise to a "trust obligation" between the United States and Native Hawaiians. *See, e.g., Price v. Akaka,* 928 F.2d 824, 826-28 (9th Cir. 1991) and 3 F.3d 1220 (9th Cir. 1993)(holding that Native Hawaiians had standing to bring claims under 42 U.S.C. sec. 1983 to challenge expenditures of the Trustees of the Office of Hawaiian Affairs because of "trust obligations" established by Congress in section 5(f) of the 1959 Admission Act; *see, e.g.,* 3 F.3d at 1225: "Congress enacted the Admission Act, a federal public trust..."); *Price v. State of Hawai`i*, 764 F.2d 623, 627-28 (9th Cir. 1985)(examining the applicability of the federal court original jurisdiction statute for Indian tribe cases, and observing that "native Hawaiians *in general* may be able to assert a longstanding aboriginal history" (emphasis in original) sufficient to give rise to standing under the statute, and that the 1959 Admission Act codified a "trust obligation" between the United States and the Native Hawaiian people "that constitutes a 'compact with the United States"); *Keaukaha-Panaewa Community Ass'n v. Hawaiian Homes Comm'n*, 739 F.2d 1467, 1471 (9th Cir. 1984)("The Admission Act clearly mandates

establishment of a trust for the betterment of native Hawaiians."); *Keaukaha-Panaewa Community Ass'n. v. Hawaiian Homes Comm'n,* 588 F.2d 1216, 1218 (9th Cir. 1978) (explaining that the State of Hawai`i is required under the 1959 Admission Act to hold and manage the Hawaiian Home Lands "as a public trust...for the betterment of the conditions of native Hawaiians...and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States").

The Hawai`i Supreme Court has also recently reaffirmed this trust responsibility in *OHA v. State*, 96 Hawaii 388, 401, 31 P.3d 901, 914 (2001), where the Court explained that the State of Hawai`i's obligation to Native Hawaiians is firmly rooted in the State's Constitution and recognized that "it is incumbent upon the legislature to enact legislation that gives effect to the right of native Hawaiians to benefit from the ceded lands trust."[7]

B. The United States Delegated Its Trust Responsibility Toward Native Hawaiians, in Part, to the State of Hawai`i.

The U.S. Congress recently explained in the Hawaiian Homelands Homeownership Act of 2000, sec. 202(13), and in the 2002 Native Hawaiian

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[7] *See also OHA v. HCDCH*, Civil No. 94-4207 (SSM)(Haw.1st Cir., Dec. 5, 2002), slip op. at 16 (quoting from 42 U.S. C. sec. 11701(16) for the finding "the United States 'reaffirmed the trust relationship which existed between the United States and the Hawaiian people by retaining the legal responsibility of the State for the betterment of the conditions of Native Hawaiians under section 5(f) of the [Admission Act]'").

Education Act, 20 U.S.C. sec. 7512(12)(B), that "Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawai`i." As is explained in more detail in Section IV(A) *infra,* this delegation constituted an explicit condition of statehood which the State was obliged to accept -- Congress required the new State of Hawai`i to adopt the Hawaiian Homes Commission Act as a "compact" between the United States and the State and required the State to manage the ceded lands as a public trust for, among other things, "the betterment of the conditions of native Hawaiians." 1959 Admission Act, secs. 4, 5(f). The language in the Admission Act is not permissive, and the State of Hawai`i does not have the option of avoiding or ignoring these delegated responsibilities, and in any event, as is explained in more detail in Sections III (C) and IV(B) *infra,* the State has fully recognized the claims of Native Hawaiians and the importance of settling these claims in a fair and honorable manner.

The State of Hawai`i's trust obligations to Native Hawaiians are particularly important because they stem from the Congressional enactment admitting Hawai`i to statehood. When Congress imposes trust responsibilities in statutes admitting territories into the Union as states, Article VI of the U.S. Constitution requires the states to defer to those admission enabling acts and to comply with the trust responsibilities. In *Idaho v. United States*, 533 U.S. 262 (2001), the U.S. Supreme

Court awarded title to disputed submerged lands to the Coeur d'Alene Tribe, even though normally such lands would pass from the federal government to a state at the time of statehood. The court ruled in favor of the tribe because of the importance of protecting native property and the presumption that anything not explicitly transferred by a native group remains as their property for their benefit.[8] The *Idaho* case reaffirms the common canon that if statutes or presumptions point in conflicting directions, courts must interpret that conflicting law in favor of native claimants.

C. The State of Hawai`i Has Accepted This Federally-Delegated Trust Responsibility.

The State's role as trustee of the "public trust" for the benefit of Native Hawaiians is acknowledged expressly in Article XII, Section 4 of Hawai`i's Constitution, and Article XII, Section 6 recognizes that Native Hawaiians are entitled to "income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians." (Exhibit I) Court decisions that have recognized the State's trust duties include *OHA v. State,* 96 Hawai`i 388, 401, 31 P.3d 901, 914 (2001)(explaining that the State of Hawai`i's obligation to Native Hawaiians is firmly rooted in the State Constitution and recognizing the "right of native

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[8] Additional cases illustrating the binding nature of conditions included in statehood admission acts can be found in the Memorandum filed by the State Council of Hawaiian Homestead Associations.

Hawaiians to benefit from the ceded lands trust"); *Pele Defense Fund v. Paty*, 73 Hawai`i 578, 605, 837 P.2d 1247, 1264 (1992)(explaining that "the ceded lands trust" is "held for the benefit of native Hawaiians and members of the public" and that beneficiaries have standing to sue to challenge alleged breaches of trust obligations); *Rice v. Cayetano (II)*, 963 F. Supp. 1547, 1554 (D. Haw. 1997)("a trust obligation owed and directed by Congress and the State of Hawai`i"); *Rice v. Cayetano (I)*, 941 F. Supp. 1529, 1543 (D. Haw. 1996)("The State [is] trustee of the public trust created by the federal government in the Admission Act"); *Rice v. Cayetano*, 146 F.3d 1075, 1080 (9th Cir. 1998)("Hawai`i acknowledged a trust obligation toward native Hawaiians as a condition of admission to the union."); *Rice v. Cayetano*, 528 U.S. 495, 120 S.Ct. 1044, 1056 (2000)("As the court of appeals did, we assume the validity of the underlying administrative structure and trusts, without intimating any opinion on that point."); *Arakaki v. Cayetano*, – F.3d –, 2003 WL 1635184 (9th Cir. 2003)(observing that "[t]he State and HHC/DHHL defendants are directed by section 4 of the Admission Act, and Article XII of the Hawai`i Constitution to provide benefits to native Hawaiians").

The Hawai`i State Legislature has repeatedly recognized the State's delegated trust responsibility to Native Hawaiians and its duty to facilitate a complete

settlement of their claims.[9] In 1993, in Act 359, the Hawai`i Legislature "recognized that the Native Hawaiian people were "denied ...their lands." In 1997, through its enactment of An Act Relating to the Public Land Trust, ch. 329, 1997 Haw. Sess. Laws 956 (hereafter cited as Act 329(1997)), Exhibit K, the Hawai`i Legislature "accepted the Apology Resolution and called for "lasting reconciliation" and "a comprehensive, just, and lasting resolution." It established a joint committee to determine "whether lands should be transferred to the office of Hawaiian affairs in partial or full satisfaction of any past or future obligations under article XII, section 6 of the Hawai`i Constitution." H.R.S. Sec. 6K-9 says the Island of Kaho`olawe and its waters shall be transferred "to the sovereign Native Hawaiian entity upon its recognition by the United States and the State of Hawai`i."

IV. THE 1959 ADMISSIONS ACT CONSTITUTES (A) A COMPACT BETWEEN THE UNITED STATES AND THE PEOPLE OF HAWAI`I, (B) A SETTLEMENT OF PART OF THE CLAIM THAT NATIVE HAWAIIANS HAVE IN THE CEDED LANDS AND IN THE REVENUES GENERATED BY THESE LANDS AND (C) A DELEGATION OF RESPONSIBILITY TO THE STATE OF HAWAI`I TO CONTINUE THE

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[9] *See, e.g.,* H.R.S. 10-1: "The people of the State of Hawai`i and the United States of America as set forth and approved in the Admission Act established a public *trust* which includes among other responsibilities, betterment of conditions for native Hawaiians. The people of the State of Hawai`i reaffirmed their *solemn trust obligation and responsibility to native Hawaiians* and furthermore declared in the State Constitution that there be an office of Hawaiian affairs to address the needs of the aboriginal class of people of Hawai`i." (Emphasis added.) (Exhibit J.)

SETTLEMENT PROCESS; AND THE STATE OF HAWAI`I HAS RECOGNIZED THE EXISTENCE OF THIS CLAIM AND THE NEED TO CONTINUE THE SETTLEMENT PROCESS.

A. Section 5(f) of the Admission Act Is a Compact Between the United States and the State of Hawai`i Relating to the Public Lands.

In § 5 of Hawai`i's Admission Act, Congress conveyed most of the ceded lands to the new State of Hawai`i with the condition that Hawai`i hold these lands and their income and proceeds as a "public trust" for one or more of five purposes, including "the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended." *Id.*, § 5(f). Then, in Section 7(b) of the same statute, Congress explicitly required the people of Hawai`i to affirm by vote that "the terms or conditions of the grants of land or other property therein made to the State of Hawai`i are consented to fully by said State and its people." And, just to reinforce the importance of these conditions, Congress added in this same section a statement that if a majority of the people of Hawai`i did not vote to accept these conditions "the provisions of this Act shall cease to be effective." In other words, Hawai`i would not have become a state if the people of Hawai`i had not agreed by vote to use the revenues from the ceded lands, in part, for "the betterment of the conditions of native Hawaiians." In case any doubt might have remained, Congress reiterated in Section 7(c) that the President must "find that the propositions set forth

in the preceding subsection have been duly adopted by the people of Hawai`i" before "Hawai`i shall be deemed admitted into the Union."

Based on drafts of earlier statehood bills, the people of Hawai`i had anticipated that such a condition would be attached to statehood and to the transfer of lands, and they put an explicit provision into the 1950 Constitution accepting any conditions of trust that Congress might put on the public lands transferred to the State of Hawai`i. This language was in Article XIV, section 7 of the 1950 Constitution, and is now found in Article XVI, Section 7: "Any trust provisions which the Congress shall impose, upon the admission of this State, in respect of the lands patented to the State by the United States or the proceeds and income therefrom, shall be complied with by appropriate legislation."[10] It is very significant for the purposes of the present litigation that Congress reviewed this language (and the rest of the 1950 Constitution, which also accepted responsibility for administering the Hawaiian Homes Commission Act, 1920) and stated explicitly in Section 1 of the 1959 Admission Act that Hawai`i's Constitution "is hereby found to be republican in *form and in conformity with the Constitution of the United States* and the principles of the Declaration of

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[10] In 1978, the voters of Hawai`i approved an amendment adding an additional sentence to this provision reinforcing the State's commitment to protect the rights of Native Hawaiians: "Such legislation shall not diminish or limit the benefits of native Hawaiians under Section 4 of Article XII."

Independence, and is hereby accepted, ratified, and confirmed." (Emphasis added.)

A review of the legislative history preceding the adoption of the Admission Act reveals that the members of Congress understood that the transfer of the Hawaiian Homes program to the State of Hawai`i and the requirement that revenues from the ceded lands be used for the "betterment of the conditions of native Hawaiians" were not duplicative, but served two separate purposes – settling in part the unresolved and festering claims of the Native Hawaiian People.[11] Similarly, the legislative record in

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[11] *See, e.g.,* statement of Hawai`i's Delegate Joseph R. Farrington that the reason for using revenues from the ceded lands for the" betterment of the conditions of native Hawaiians""is the very strong feeling that you find in Hawai`i that the Hawaiians did not do so well when the land was divided in the "great mahele" of 1848. And that feeling is particularly among the Hawaiians themselves. After all, they have something of a prior consideration as to the use of the receipts of the land." U.S. Senate Committee on Interior and Insular Affairs, 81st Cong., 2d Sess, *Hearings on H.R. 49, S. 156, and S.1782*, May 1, 2, 3, 4, and 5, 1950, at 354.

Senator Guy Cordon from Oregon expressed full support for the view explained by Delegate Farrington, recognizing and explaining to the other members that the Native Hawaiians had an unresolved claim to the lands then held by the federal government:

> I agree with the Delegate [Farrington] when he suggests that there is a feeling that perhaps the Hawaiians have not been wholly justly dealt with here. I have that feeling. The so-called public lands...those lands are in no sense public lands as that term is understood in the United States. They were initially crown lands, and went from the status of crown ownership into that of public ownership of a republic which succeeded the monarchy. From my viewpoint the United States of America has not any interest in them whatever, except to transmit them to the people of Hawai`i. If I could transmit a portion of them and get a good job for the Hawaiians of Hawai`i I would like

Hawai`i also reveals that the delegates to the 1950 Constitutional Convention understood that the revenues for Native Hawaiians from the ceded lands would be an additional effort to resolve their claims, over and above the benefits provided from the Hawaiian Homes program.

Two separate committees – (1) the Committee on Agriculture, Conservation and Land and (2) the Committee on the Hawaiian Homes Commission Act (HHCA) – reported out provisions dealing with the acceptance of trust responsibilities. The HHCA Committee reported out proposals that eventually became art. XI, §§ 1 and 2 of the 1950 Constitution[12] relating to the Hawaiian Home Lands program, and the

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to do it.

Id.

In hearings held in 1955, the chief counsel for the House Committee on Interior and Insular Affairs (Mr. Abbott) explained to Representative B.F. Sisk of California that the goal of the language of the provision that became Section 5(f) of the Admission act was to provide revenues for two "separable" beneficiaries – (a) for the general public through "support of the public schools...and other public educational institutions" and (2) for "the betterment of conditions of native Hawaiians" House Committee on Interior and Insular Affairs, *Hearings on H.R.2535 and H.R. 2536, Bills "To Enable the People of Hawai`i and Alaska Each to Form a Constitution and State Government and to be Admitted into the Union on an Equal Footing with the Original States," and related Bills H.R. 49, H.R. 185, H.R. 187, H.R. 248, H.R. 511, H.R. 555, and H.R. 2531,* 84th Cong., 1st Sess., Jan. 31, 1955, at 163.

[12] Renumbered and amended in 1978 as Article XII, §§ 1 and 2 of the Hawai`i Constitution.

Committee on Agriculture, Conservation and Land reported out separate provisions relating to the public lands that were expected to be transferred from the federal government to the new state. This committee first considered a provision that was very similar to § 5(f) of the Admission Act, in order to conform Hawai`i's Constitution to the version of the statehood bill then pending before Congress. 1 *Proceedings of the Constitutional Convention of 1950* at 234-35 (1960). But in the Committee of the Whole, this more specific trust language was replaced by the more general language that became Article XIV, sec. 7, and is now the first sentence in Article XVI, sec. 7 (quoted *supra* in text at footnote 10). It is significant that this provision did not find its genesis in the HHCA Committee and was not specifically related to the Hawaiian Homes program. The Constitutional Convention's adoption of the language in Article XIV, sec. 7 (now Article XVI, sec. 7) *in lieu* of a provision nearly identical to the final language of § 5(f) of the Admission Act indicates that the trust referred to in Hawai`i's Constitution is the 5(f) trust.

It cannot be doubted, therefore, that the State and the federal government entered into a bilateral compact regarding the revenues from these lands, and that an essential part of that compact was that the State would transfer part of the revenues from these lands to the Native Hawaiian People in order to resolve, in part, the claims that Native Hawaiians have regarding these lands. Congress required the State and its

people to agree to use lands and revenues for the Native Hawaiian people because if its recognition of the claims of the Native Hawaiian people and the need to make progress in resolving these claims. The provisions in the Admissions Act thus constitute a settlement of part of the claim, and the State's decision in 1978 to create the Office of Hawaiian Affairs and then to allocate 20 percent of the income generated from the trust lands for programs for Native Hawaiians unquestionably falls within the scope of the State's compact with the United States to utilize the trust lands and income "for the betterment of the conditions of native Hawaiians." The annual appropriation of general fund revenues by the Hawai`i Legislature to support the administration of the Office of Hawaiian Affairs and its activities is designed to fulfill, in part, the State's obligations under this bilateral compact.

B. The Establishment of the Section 5(f) Trust Constitutes a Settlement of Part of the Claims of the Native Hawaiian People and a Delegation of Responsibility to the State of Hawai`i to Continue the Settlement Process.

As explained in the earlier sections, the United States always recognized during the territorial years that it held the ceded lands of Hawai`i pursuant to a unique trust because these lands were acquired after the illegal overthrow of the Kingdom of Hawai`i and because Native Hawaiians never consented to the transfer or received any

compensation for their loss of these lands. *See, e.g.,* 1993 Apology Resolution.[13] It is equally important that the State has acknowledged on several occasions that Native Hawaiians have valid claims to these ceded lands.[14] As explained above, a clear example can be found in Act 359 (1993), where the Hawai`i State Legislature recognized that the Native Hawaiian People were "denied...their lands." Also in 1993, when it accepted the return of Kaho`olawe from the federal government, the Hawai`i Legislature recognized that it holds federally-returned ceded lands in temporary trust, and that the proper entity to control these lands is the Native Hawaiian Nation once it is restored. H.R.S. Section 6K-9.

In 1997, Hawai`i's Legislature addressed the claims of Native Hawaiians by enacting Act 329, which referred in Section 1 to the 1993 Congressional Apology

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[13] This Honorable Court has recognized the existence of Native Hawaiian claims in another context in *Hawaii Motor Sports Center v. Babbitt*, 125 F.Supp.2d 1041, 1048 (D.Hawai`i 2000)("The underlying goal of the HHLRA is to resolve the longstanding claims by DHHL that the federal government had inequitably removed certain lands from the 'available land' to be used to benefit native Hawaiians under the HHCA of 1920, 42. Stat. 108.").

[14] Recently the First Circuit Court for the State of Hawai`i has explained that "[a]lthough, by its terms, the 1993 Apology Resolution does not itself 'serve as a settlement of any claims against the United States,' or 'result in any changes in existing law,' or itself create a claim, right, or cause of action, *it confirms the factual foundation for claims that previously had been asserted.*" *OHA v. HCDCH,* Civil No. 94-0-4207 (SSM)(Haw.1st Cir., Dec. 5, 2002), slip op. at 28 (*citing State v. Lorenzo,* 77 Haw. 219, 221, 883 P.2d 641, 643 (Haw. App. 1994)).

Resolution as an accurate recounting of "the events of history relating to Hawai`i and Native Hawaiians," and called for a "lasting reconciliation" and "a comprehensive, just, and lasting resolution." To achieve this goal, the Legislature provided partial funding to undertake a complete inventory of the ceded lands and established a joint committee consisting of representatives of the Governor, the Legislature, and OHA to determine "whether lands should be transferred to the office of Hawaiian affairs in partial or full satisfaction of any past or future obligations under article XII, section 6 of the Hawai`i Constitution." *Id.*, Section 3. The following year, in his statement outlining his plans for his second four-year administration, Governor Benjamin J. Cayetano stated that "we will settle the ceded lands issue before the end of my second term. This complex and most difficult issue must be resolved in a manner which is fair to all." *The Next Four Years: Completing the Vision*, Honolulu Advertiser, Oct. 16, 1998, at A13, col. 3.

Governor Linda Lingle has similarly recognized the importance of addressing and resolving the claim of the Native Hawaiian people for an appropriate share of the ceded lands. In her State of the State address to the Legislature on January 21, 2003, she said:

> Here at home in Hawai`i I will continue to work with you and with the Hawaiian community *to resolve the ceded lands issue* once and for all.

> Our joint decision to make the $10.3 million payment *is a good first step, but that is all it is.* Like so many other issues we currently face, the ceded lands issue is one that did not occur overnight, and will not be resolved overnight. It is as complicated as it is emotionally charged. But until we get it resolved, our community can never really come together as one. (Emphasis added.)[15]

The State's annual appropriation of general funds to support OHA's administration and program activities result from its recognition of its obligation to continue this important settlement process.

C. A Legislatively-Approved Settlement Cannot Be Challenged Subsequently by Taxpayers.

The 1959 Admission Act constitutes the formal recognition by the federal government of the continuing and unsettled claims of the Native Hawaiians, and it itself is a settlement of part of those claims by protecting the Hawaiian Homes Commission Act, 1920, and by requiring the State of Hawai`i to administer the transferred ceded lands, in part, as "a public trust" and allocate a part of the revenues from these lands "for the betterment of the conditions of native Hawaiians." Insofar as it is a settlement of part of these claims, it constitutes a binding contract that cannot be challenged or set aside by Plaintiffs or other challengers. And because the State of Hawai`i's commitment to complete the settlement process was an explicit condition

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[15] Governor Linda Lingle's State of the State speech can be found at <http://www.hawaii.gov/gov/Members/steveb/speeches/stateofstate.html> (site visited April 12, 2003).

of statehood, it is not a commitment that can be abandoned or set aside by judicial action.

This Honorable Court has explained previously why a legislative settlement is not subject to challenge subsequently by taxpayers. Order Granting in Part and Denying in Part Motions to Dismiss on Standing Grounds, filed May 8, 2002, slip op. at 18-19 n. 10 (explaining that "[t]he settlement of past claims is not an improper purpose that Plaintiffs have taxpayer standing to assert," and observing that "[t]o allow Plaintiffs to challenge the settlement in this manner would be tantamount to having the court review the wisdom, at any time, or every legislative decision, regardless of when made, to settle a case rather than to litigate it"). As the Court stated, settlements by their nature address claims that have not been fully developed or resolved, but they are nonetheless to be encouraged and enforced in order to bring closure to festering disputes.

The fact that a settlement favors exclusively members of a certain racial group, if such be the case, would not make it unconstitutional, because the injuries being compensated may have been suffered exclusively by members of a single racial group, or perceived in such a manner by the legislative body approving the settlement. *See, e.g.,* Civil Liberties Act, Pub. L. 100-383 (1988)(authorizing $20,000 to be paid to each person of Japanese ancestry – or an immediate family member – who had been

forcibly relocated to interment camps from March 1942 to January 1946); *id.* (providing $12,000 each to Aleutian Islanders who were forced to leave their ancestral homes during World War II and relocate 1,200 miles away to abandoned canneries and mines in southeastern Alaska for almost three years); *Mochizuki v. United States*, 41 Fed. Cl. 54 (1998) and No. 97-294C (filed Jan. 25, 1999)(approving a settlement whereby the United States agreed to pay $5,000 to Latin Americans of Japanese ancestry who had been relocated to U.S. encampments during World War II).

Similarly, disparities in settlement amounts among ethnic groups (*i.e.*, $20,000 for interred individuals of Japanese ancestry in the United States compared to $5,000 for those located in Latin America and $12,000 for the Aleuts and nothing at all for other injured groups) would not be subject to challenge by taxpayers as unconstitutional racial discrimination, because each settlement must be viewed as a good-faith effort by the government to analyze the strength of a claim and the extent of the injuries and then to reach through negotiations an appropriate resolution of the dispute. Even if the claim itself was not judicially cognizable or "legitimate" or "valid" in a formal legal sense, a settlement of the claim would still be fully enforceable and immune from subsequent challenge, because the settlement constitutes a binding contract and sufficient "consideration" to support the contract can be found in the agreement of the claimant to end formal pursuit of the claim.

V. PLAINTIFFS' COMPLAINT SHOULD BE DISMISSED ALTOGETHER BECAUSE IT PRESENTS A NONJUSTICIABLE POLITICAL QUESTION.

In *Kahawaiolaa v. Norton*, 222 F.Supp.2d 1213 (D.Hawaii 2002), the U.S. District Court for the District of Hawai`i ruled that a claim brought by a group of Native Hawaiians challenging the exclusion of Native Hawaiians from the acknowledgment regulations established by the Congress and the Department of Interior constituted a nonjusticiable political question because Congress has unreviewable authority and responsibility to decide how to deal with the indigenous people within U.S. borders. The Court recognized that Native Hawaiians are "people indigenous to the United States," *id.* at 1220 n.9 (*quoting from* Felix S. Cohen's *Handbook of Federal Indian Law* 797-98 (2nd ed., Rennard Strickland et al. eds. 1982)), but concluded that it was up to Congress to determine "the full extent of the trust obligation owed by the United States to Native Hawaiians and the manner of its fulfillment." *Id.*

In the present case, Plaintiffs are challenging programs (DHHL and OHA) that have been established by the U.S. Congress and the State of Hawai`i designed to fulfill, at least in part, that "trust obligation owed by the United States to Native Hawaiians." If it is a nonjusticiable political question to challenge the failure of Congress to grant rights to and establish programs for Native Hawaiians, then it must

logically also be a nonjusticiable political question to challenge those programs that have been established by Congress, and by the State pursuant to the mandate laid down by Congress.

This Honorable Court explained earlier that "whether native Hawaiians are a 'tribe'...may raise a political rather than a purely legal question." *Arakaki v. Cayetano*, 198 F.Supp.2d 1165, 1178 n.11 (D.Hawai`i 2002). This recognition, coupled with the ruling in *Kahawaiolaa*, leads to the conclusion that the present claim must be dismissed as a nonjusticiable political question.

It has long been established that federal courts must defer to the political branches with regard to the recognition of or establishment of a "special relationship" with a native group. "'[T]he action of the federal government in recognizing or failing to recognize a tribe has traditionally been held to be a political one not subject to judicial review.'" *Miami Nation of Indians of Indiana, Inc. v. U.S. Dept. of Interior*, 255 F.3d 342, 347 (7th Cir. 2001)(*quoting from* William C. Canby, Jr., *American Indian Law in a Nutshell* 5 (3d ed. 1998)); *Price v. State of Hawai`i,* 764 F.2d 623, 628 (9th Cir. 1985)("In the absence of explicit governing statutes or regulations, we will not intrude on the traditionally executive or legislative prerogative of recognizing a tribe's existence.). *See also Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 534 (1998) (interpreting a statute to say that the lands allocated by

Congress to the Alaska Natives do not have the status of "Indian lands," but also acknowledging that Congress has the power to alter or amend the statute and that the ultimate determination of this issue is exclusively and unreviewably in the hands of the Congress: "Whether the concept of Indian country should be modified is *entirely* for Congress" (emphasis added)).

The U.S. Congress has been crystal clear, in legislation enacted after *Rice v. Cayetano*, 528 U. S. 495 (2000), that "the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives." Hawaiian Homelands Homeownership Act of 2000, sec. 202(13); 2002 Native Hawaiian Education Act, Sec. 7512(12)(D). It would therefore be altogether inappropriate, and a violation of the political question doctrine, for this Honorable Court to question the conclusion or actions of the Congress regarding this matter. Because this Court is barred from addressing the central issue raised by Plaintiffs, Plaintiffs' Complaint in the present case must be dismissed.

VI. CONCLUSION.

The OHA Defendants respectfully request this Honorable Court (1) to find as facts and conclusions of law that (A) that Native Hawaiians are a native people and/or indigenous or aboriginal group under U.S. and international law, (B) that the United States has recognized and accepted a trust responsibility toward Native Hawaiians and

has delegated that trust responsibility in part to the State of Hawai`i, and ( C) that the 1959 Admissions Act constitutes a settlement of part of the claim that Native Hawaiians have in the ceded lands and the revenues generated by these lands and a delegation of responsibility to the State of Hawai`i to continue the settlement process, or, in the alternative, (2) to dismiss this claim as a nonjusticiable political question.

DATED: Honolulu, Hawai`i, April 14, 2003.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

EARL F. ARAKAKI, et al, Plaintiffs, vs. LINDA LINGLE, et al., Defendants.	**CIVIL NO. 02-00139 SOM-KSC** (Declaratory Judgment) CERTIFICATE OF COMPLIANCE

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that pursuant to Local Rule 7.5(e), the foregoing attached memorandum is proportionately spaced, has a typeface of 14 points and contains 8,843 words.

DATED: Honolulu, Hawaii, April 14, 2003.

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