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Assistant Secretary,
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via fax: (202)219-1790

Mark Van Norman,
Director, Office of Tribal Justice
U.S. Department of Justice
c/o John Berry

Re: Reconciliation process with Native Hawaiians

Aloha Gentlemen:

You form yet another U.S. study commission arriving in Hawai`i to hear the voices of the Native Hawaiian people. We native Hawaiians will line up to put our pleas before you, hoping that a just resolution will result. Hope springs eternal.

Before addressing the content of your quest for views by Native Hawaiians in specific areas of Health and Education, Housing, Culture and Economic Development, Land and Natural Resources, Self Determination and ceded lands, I present to you the following caveat taken from the International Relations Committee of the Native Hawaiian Convention, a grass roots effort to have the native Hawaiian people determine for themselves their future course, a movement I support:

This testimony presented before this commission is given in the spirit of aloha. It is an expression of our sincere desire to alleviate as much of the present woes of the native Hawaiian people as possible within the current political and legal framework in the United States. However, the submission of this statement should not be misconstrued as a concession to the commission or to its authorizing body as possessing the proper authority to dispense the question of reconciliation for the historical and contemporary wrongs committed against the native Hawaiian people or of the Hawaiian nationals.

The question of U.S. delinquency in Hawai`i and of the remedy appropriate to

such injuries is a matter not confined to the purview of this commission or of the U.S. government. The consequences of a state committing an act of aggression against another state is a matter of international import to be seen through the perspective of international standards of conduct. The obligations of an invading state in violation of international law to the invaded state and its people is a matter of international import. Thus, we make this special appearance before this commission, reserving all questions of jurisdiction for an as yet, unidentified independent, impartial body.

The current popular word in circulation is "reconciliation." A generation ago, they were instead, "reparation" and "restitution." Those are words coming to Hawai'i from a government whose culture and perspective is foreign to the Hawaiian soul. They may have been words resulting in a compromise in order to obtain a confession from the U.S. government.

Ho`opono is more correct in our mind. It is a practice which arises out of our culture. It is a process which meets more appropriately with the situation before us. It is a concept more widely accepted in principles of disputes between nations. Ho`opono is founded on the following concepts: Recognition, Responsibility, Reconstruction, and Reparation. It follows the basic understanding that thieves should not sit in judgement of themselves.

In Ho`opono, two parties in an injured relationship are brought together in equal dignity and respect. A trusted person or entity of moral authority, impartial and independent, is identified and given charge over the process of healing the relationship. The party identified as the violator of the other is offered the opportunity to confess the violation. If property or rights were stolen, the return follows the confession. And finally, a search for additional remedies to injuries incurred during the period of the taking, and its following trail of consequences, is made.

Only after these stages of repair have been taken is there forgiveness by the injured party, a release of ill will, and a beginning to real healing.

If there is to be real and long term healing over the U.S. participation in the overthrow, the eventual taking of the Hawaiian nation and all the related and consequent injuries, it is a process of Ho`opono which must occur. That is the only proper process of reconciliation.

Therefore, I present the following testimony to this commission with the limitations expressed in this caveat.

I wish to direct my remarks to the matter of civil and political issues between the United States of America and the Hawaiian nationals. In doing so, I reference you to earlier letters of November 1, 1999 to Senator Daniel K. Akaka on Social Responsibility, Taxation and

Colonization, 14 February 1990 to Senator Daniel K. Inouye on Hawaiian Sovereignty, Testimony of August 26, 1988 before the U.S. Senate Select Committee on Indian Affairs at the East-West Center, Honolulu, Hawai'i, and a letter dated July 23, 1974 to Representative Daniel K. Inouye and all others from Hawai'i to the U.S. Congress, on the subject of reparations. Copies of these prior correspondences may be made available should you wish copies of them. I will paraphrase from them in this intervention.

I am a national of Hawai'i. My ancestors were Hawaiian nationals and their change to American nationality was never condoned nor consented to by them. I was born in Hawai'i. I stand behind my inherent rights identified and articulated in the Universal Declaration of Human Rights adopted unanimously by the General Assembly of the United Nations in 1948. At Article 15, that declaration proclaims that *Everyone has the right to a nationality*, and further that *No one shall be arbitrarily deprived of their nationality nor the right to change their nationality*. On 24 February, 1998, U.N. Secretary General Kofi Annan reiterated that "those rights are the [individuals.] It is not something that is given to him by a government, like a subsidy that can be taken away. It is intrinsic, it is inherent . . ."

The events which have led the U.S. to claim Hawai'i as its territory and than a State of its union are fraught with illegalities unnecessary to detail in the current instant. Instead, I point out only three of the major points of error.

I: A simple recollection of the United Nations' Definition of Aggression applied to the confession of U.S. violations contained in the joint congressional resolution of apology, Public Law 103-150 should suffice to prove the illegalities which occurred 106 years ago. Through such aggression, an unequal treaty was signed between the Republic of Hawai'i and the United States of America. The Republic of Hawai'i had no capacity to have engaged in such a treaty for it had no legitimate basis for its existence and claim to be the government of the Hawaiian nation. The Republic of Hawai'i stood in direct contravention of the international legal principle established by the great American Revolution and contained in its Declaration of Independence, that Governments derive their just powers from the consent of the governed. The consent of the people of the Hawaiian Islands to the forms of Government imposed by the so-called Republic of Hawaii, and to said Treaty of Annexation, had never been asked by and was never accorded, either to said Government or to said project of Annexation. See Memorial Statement of October 8, 1897 adopted on Palace Square, Honolulu, Hawai'i by the last mass meeting of Hawaiian nationals.

II: The violation of U.S. Constitutional Law followed when the U.S. Congress, by joint resolution, adopted the resolution of Hawaiian annexation, the Newlands Resolution. Such an action was neither permitted by Article 2, Section 2, cl. 2 or Article IV, Section 3, cl. 1 of that document.

III: The United States, pursuant to the United Nations Charter, was obligated to

bring about, as a sacred trust obligation, self-governance of people under colonial like conditions. Hawai'i, under U.N. General Assembly Resolution 66 was specified as one of those territories for which the U.S. was under such an obligation. The U.S. has failed to meet the terms of those obligations as further elucidated in General Assembly Resolution 1514 and 1541 dealing with Decolonization. Its taking of Hawai'i as a State of the U.S. union was contrary to the obligations it had undertaken and constituted a fraud against the Hawaiian people and the international community.

Following such illegalities, exactly what was the injury to the native Hawaiians?

A. Self-Determination

The United States of America interrupted and has continually prevented the exercise of self-determination of the Hawaiian nation. That exercise was expressed in the form of an independent nation. It was not a "nation within a nation", it was not an indian reservation, it was not merely an autonomous government created from the whim of Congressional will. It was not an entity with "federal status" from the United States. We had existed as a full-fledged independent nation, equal in stature and human rights and entitled to all the courtesies and dignity of all other independent nations of the world.

B. Lands

The lands of Hawaii which were taken were not "ceded" lands. They were Crown lands and Government lands. The "ceded" definition to these lands, while initially being identified as the same as the Crown and Government lands, also carries with it the power of the invaders to manipulate those lands while retaining the same definition. Thus, by referring to such lands as "ceded", they take on the legitimacy of congressional, presidential or gubernatorial treatment which over time allows for the devaluation of that corpus of lands taken. Hawaii is entitled to the Crown and the Government lands which were taken; not to the aftermath of governmental exchanges and spoilation of such lands.

C. Citizenship

The exercise of Hawaii's people to their nationality was also taken. This exercise was not racially defined. Hawaiian nationals were of many different races, all injured by the United States interference with the life of the nation. Furthermore, national rights did not repose only in the citizens in existence at the time of the invasion, but were part of that body of inherent rights of every child born subsequently, to a Hawaiian national.

D. Population Control

Hawaii had the right to control over its population. It was able to limit its population or determine its national population mix if it wanted. It was able to prevent transmigration into Hawaii by people from the United States and any other foreign nation.

E. Education Control

The Hawaiian nation had full control over its educational system. It could

determine the underlying foundation of all education in Hawaii, developing a clear sense of identity and the meaning of being a Hawaiian in every child. Through the control over the educational system, we had the ability to mold our citizenry in our own dreams and aspirations, giving them a basis of history, culture, and destiny rooted in Hawaiianism.

F. Others

Other important areas to consider but for which time prevents me to detail at this time include media control, economic control, taxation control, control over military use of Hawaii by foreign powers, control over our ali'i trusts such as the Bishop Estate.

In the face of these illegalities and resultant injuries, and the proclamation which I, and others, have made over many years over our continuing assertion of Hawaiian nationality, the United States government should take immediate and necessary steps to address the on-going violation to human rights and fundamental freedoms. Specifically, the government should take affirmative steps to respect "our 'place' in our homelands, to be Hawaiians consistent with our own views and our own aspirations." Statement to the U.S. Senate Select Committee on Indian Affairs, supra., see also Letter to Inouye 14 Feb. 1990, Supra.

That place may be political, economic, cultural, religious, educational, etc. For example, if an individual or group asserts that they are not American citizens but remain Hawaiians, that assertion should be respected and in no way interfered with. If an individual or group asserts that they want to practice their traditional lifestyles, that right must be respected. If they assert they have the right to educate their children in their own ways, that right must be respected.

Impossible? No.

Difficult? Perhaps. -

But this type of condominium relationship is not unheard of or untried. Indeed it goes on today here in Hawaii with your different layers of laws, County, State, Federal and international. It went on in the New Heberdies under British law and French law until their independence into a new nation, Vanuatu. This type of condominium relationship has every support in history and law in view of the American conduct in Hawaii and the undeniable fact that the Hawaiian nation has never consented to becoming part of the United States or its people accepting American citizenship.

That movement to accord respect for the Hawaiian's place in Hawai'i is not the answer to the quest for Hawaiian Sovereignty. It is, however, another step in bringing about the justice to the Hawaiians who have been deprived the most basic of human rights - self determination.

How would such laws work? First, it would allow those Hawaiian citizens of the indigenous blood to participate fully in those activities accorded specifically to them. Thus, participation in the Office of Hawaiian Affairs, including voting in the election of its Trustees,

would not require relinquishment of any allegiance as a Hawaiian citizen.

Second, Hawaiian nationals would be recognized as not being subject to the taxing laws of the United States of America, the State of Hawaii or any county within the borders of Hawaii.

Third, the right to enter and leave one's country will be respected by the United States of America. Thus, Hawaiians will be able to exercise their right to travel without interference from the United States.

Fourth, no Hawaiian would be required to register with the Social Security Administration or with the Selective Service Board.

Fifth, no criminal laws of the United States of America would apply to Hawaiians. However, during the interim period in which the Hawaiian nation is unable to assert itself in all areas of national jurisdiction, the United States should assist in the application of international standards of conduct and respect for human rights. For example, the International Bill of Human Rights could be the document to provide the guideline for conduct of Hawaiian citizens. Furthermore, the process of determining guilt or innocence of Hawaiians for violation of such international standards should be a process formulated with the full participation of the Hawaiians themselves. (Here, the International Labor Organization's (ILO) Convention 169 (1989) as well as the records of the Committee on the Revision of Convention 107 may be helpful in deriving specific legislation by the U.S. Congress.)

Sixth, the laws of the United States regulating or restricting international trade and commerce should not be applicable to Hawaiians except as regards to trade with the United States of America. However, during the interim period in which the Hawaiian nation is unable to assert itself in all areas of national jurisdiction, the United States should assist in the inspection of the importation of goods which may prove harmful to the general health and welfare of the people of Hawaii and to the environment of Hawaii in general, but such assistance should be accomplished only with the full participation and consent of the Hawaiian people.

Seventh, no lands in Hawaii should be bombed by the United States of America or by any guests nations of the U.S. Such bombings constitute acts of war and are violations to international law.

Eighth, no Hawaiian should be penalized for exercising his or her rights or for asserting his or her citizenship in Hawaii. Thus, no loss of benefits in the social security program or retirement, pension and profit sharing, or veterans benefit programs of the United States should result to any Hawaiian whose contributions in such programs have already matured. For those whose contributions have not yet matured or "vested", such contributions should be returned or accorded appropriate consideration in awarding benefits from such programs.

Of course, many more areas of the law should be addressed to accord that Hawaiian place

in Hawaii.

These modest suggestions are made from a perspective of principal and not interest. What are the principals of human rights and fundamental freedoms at issue here? They are simply that a people have been denied their basic right of self-determination, and in that denial, a long list of laws have been applied to them, forcing them into the political/legal life of the imposing government. The remedy is clearly to be founded upon principals and not the financial, political, or military interest of the colonial state which now occupies the invaded territory.

Both of you gentlemen have been charged with a challenging task, to hear the voices of the native Hawaiian people. The task of being willing to present those voices by the native Hawaiians are just as challenging. I hope we are all ready to cooperate on a foundation of honesty and humanity as we apply ourselves to these common challenges to ho'opono the illness which sits in this land.

Aloha 'āina,



Pōkā Laenui